



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 14-1018
July 23, 2014

AUCTION OF ADVANCED WIRELESS SERVICES (AWS-3) LICENSES SCHEDULED FOR NOVEMBER 13, 2014

NOTICE AND FILING REQUIREMENTS, RESERVE PRICES, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 97

AU DOCKET NO. 14-78

TABLE OF CONTENTS

| Heading | Paragraph # |
|--|-------------|
| I. GENERAL INFORMATION | 1 |
| A. Introduction..... | 1 |
| B. Description of Licenses to be Offered in Auction 97 | 6 |
| C. Rules and Disclaimers..... | 9 |
| 1. Relevant Authority | 9 |
| 2. Prohibited Communications and Compliance with Antitrust Laws | 11 |
| a. Entities Subject to Section 1.2105 | 12 |
| b. Prohibition Applies Until Down Payment Deadline..... | 18 |
| c. Prohibited Communications | 19 |
| d. Disclosure of Bidding Agreements and Arrangements..... | 23 |
| e. Section 1.2105(c) Certification..... | 26 |
| f. Duty to Report Prohibited Communications..... | 27 |
| g. Procedure for Reporting Prohibited Communications..... | 30 |
| h. Winning Bidders Must Disclose Terms of Agreements | 33 |
| i. Additional Information Concerning Rule Prohibiting Certain Communications | 34 |
| j. Antitrust Laws..... | 35 |
| 3. Incumbency Issues | 37 |
| 4. Commercial Spectrum Enhancement Act/Spectrum Act Requirements | 39 |
| 5. International Coordination | 42 |
| 6. Quiet Zones | 43 |
| 7. Spectrum Screen for Competitive Review of Secondary Market Transactions | 44 |
| 8. Due Diligence..... | 46 |
| 9. Use of Integrated Spectrum Auction System | 52 |
| 10. Fraud Alert | 53 |
| 11. Environmental Review Requirements | 55 |
| D. Auction Specifics | 56 |
| 1. Auction Start Date..... | 56 |
| 2. Auction Title..... | 58 |
| 3. Bidding Methodology..... | 59 |
| 4. Pre-Auction Dates and Deadlines..... | 60 |

| | |
|--|-----|
| 5. Requirements for Participation..... | 62 |
| II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS..... | 63 |
| A. General Information Regarding Short-Form Applications..... | 63 |
| B. License Selection..... | 68 |
| C. Disclosure of Bidding Arrangements..... | 69 |
| D. Ownership Disclosure Requirements..... | 72 |
| E. Foreign Ownership Disclosure Requirements..... | 74 |
| F. National Security Certification Requirement for Auction 97 Applicants..... | 75 |
| G. Acknowledgement Statement for Auction 97 Applicants..... | 76 |
| H. Designated Entity Provisions..... | 79 |
| 1. Bidding Credits for Small Businesses..... | 80 |
| a. Bidding Credit Eligibility Criteria..... | 81 |
| b. Revenue Disclosure on Short-Form Application..... | 84 |
| 2. Attributable Interests..... | 85 |
| a. Controlling Interests..... | 85 |
| b. Affiliates..... | 87 |
| c. Material Relationships..... | 88 |
| d. Gross Revenue Exceptions..... | 90 |
| e. Bidding Consortia..... | 92 |
| 3. Installment Payments..... | 93 |
| I. Tribal Lands Bidding Credit..... | 94 |
| J. Provisions Regarding Former and Current Defaulters..... | 95 |
| K. Optional Applicant Status Identification..... | 102 |
| L. Minor Modifications to Short-Form Applications..... | 103 |
| M. Maintaining Current Information in Short-Form Applications..... | 109 |
| III. PRE-AUCTION PROCEDURES..... | 110 |
| A. Online Auction Tutorial – Available August 28, 2014..... | 110 |
| B. Short-Form Applications – Due Prior to 6:00 p.m. ET on September 12, 2014..... | 114 |
| C. Application Processing and Minor Corrections..... | 117 |
| D. Upfront Payments – Due October 15, 2014..... | 120 |
| 1. Making Upfront Payments by Wire Transfer..... | 121 |
| 2. FCC Form 159..... | 125 |
| 3. Upfront Payments and Bidding Eligibility..... | 126 |
| E. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments..... | 133 |
| F. Auction Registration..... | 134 |
| G. Remote Electronic Bidding..... | 138 |
| H. Mock Auction – November 10, 2014..... | 140 |
| IV. AUCTION..... | 142 |
| A. Auction Structure..... | 143 |
| 1. Simultaneous Multiple Round Auction..... | 143 |
| 2. Single Auction with a Single Set of Procedures and Requirements for the Unpaired and Paired Bands..... | 146 |
| 3. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction..... | 149 |
| 4. Eligibility and Activity Rules..... | 158 |
| 5. Auction Stages..... | 161 |
| 6. Stage Transitions..... | 166 |
| 7. Activity Rule Waivers..... | 168 |
| 8. Auction Stopping Rules..... | 172 |
| 9. Auction Delay, Suspension, or Cancellation..... | 179 |
| B. Bidding Procedures..... | 181 |
| 1. Round Structure..... | 181 |

| | | |
|-----|--|-----|
| 2. | Reserve Price and Minimum Opening Bids | 183 |
| a. | Reserve Price | 184 |
| b. | Minimum Opening Bids | 193 |
| 3. | Bid Amounts | 198 |
| a. | Minimum Acceptable Bids | 199 |
| b. | Additional Bid Amounts | 202 |
| c. | Bid Amount Changes | 204 |
| 4. | Provisionally Winning Bids | 206 |
| 5. | Bidding | 208 |
| 6. | Bid Removal and Bid Withdrawal | 215 |
| a. | Bid Removal | 217 |
| b. | Bid Withdrawal | 218 |
| c. | Calculation of Bid Withdrawal Payment | 220 |
| 7. | Round Results | 223 |
| 8. | Auction Announcements | 226 |
| V. | POST-AUCTION PROCEDURES | 227 |
| A. | Down Payments | 228 |
| B. | Final Payments | 229 |
| C. | Long-Form Application (FCC Form 601) | 230 |
| D. | Ownership Disclosure Information Report (FCC Form 602) | 233 |
| E. | Tribal Lands Bidding Credit | 236 |
| F. | Default and Disqualification | 239 |
| G. | Refund of Remaining Upfront Payment Balance | 242 |
| VI. | CONTACT INFORMATION | 244 |
| | Attachment A: Licenses to Be Auctioned | |
| | Attachment B: Minimum Acceptable Bid Formula | |
| | Attachment C: List of Parties | |
| | Attachment D: Short-Form Application Filing Instructions | |
| | Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159) | |
| | Attachment F: Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of the Rule Prohibiting Certain Communications, 47 C.F.R. § 1.2105(c) | |
| | Attachment G: Acknowledgement Statement for Auction 97 Applicants | |

I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) establishes the procedures, reserve prices, and minimum opening bid amounts for the upcoming auction of 1,614 Advanced Wireless Services licenses in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (collectively, the “AWS-3” bands).¹ This auction, which is designated as Auction 97, is scheduled to start on November 13, 2014. This Public Notice provides an overview of the procedures, terms, and conditions governing Auction 97 and the post-auction application and payment processes.

2. The Federal Communications Commission (“Commission” or “FCC”) is offering the licenses in Auction 97 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum

¹ Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, *Report and Order*, 29 FCC Rcd 4610 (2014) (*recon. pending*) (“*AWS-3 Report and Order*”). A summary of the *AWS-3 Report and Order* was published at 79 Fed. Reg. 32366 (Jun. 4, 2014). All references to the Part 2 and 27 rules adopted by the Commission in the *AWS-3 Report and Order* and cited herein will become effective on the dates announced in the Federal Register Notice summary of the *AWS-3 Report and Order*.

Act”).² The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in certain specified frequency bands using a system of competitive bidding no later than February 2015.³ In February 2013, the National Telecommunications and Information Administration (“NTIA”) identified the 1695-1710 MHz band for reallocation from Federal use to non-Federal use in satisfaction of its Spectrum Act obligation.⁴ In the *AWS-3 Report and Order*, the Commission identified the 1755-1780 MHz band in satisfaction of the Spectrum Act’s requirement that it identify fifteen megahertz of contiguous spectrum in addition to the bands specifically identified in the Spectrum Act.⁵

3. On May 19, 2014, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended,⁶ the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 97.⁷ Ten comments, eight reply comments, ten *ex parte* filings, and four brief comments were submitted in response to the *Auction 97 Comment Public Notice*.⁸

4. Based on the record and after considering comments provided in response to the *Auction 97 Comment Public Notice*, this Public Notice, establishes procedures for, among other things:

- Using the Commission’s standard simultaneous multiple-round (“SMR”) auction format in a single auction event subject to uniform bidding procedures for the unpaired 1695-1710 MHz band and the paired 1755-1780 MHz/2155-2180 MHz bands, except that bidding will close on a band after five consecutive rounds in which no bidding activity occurs on licenses in that band provided that the reserve for that band has been met;
- Filing short-form applications to participate in Auction 97 during a ten-business day window that closes on September 12, 2014;
- Limited information disclosure, to enhance competition by safeguarding against potential anti-competitive auction strategies;

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”), codified at 47 U.S.C. § 1401 *et seq.*

³ See 47 U.S.C. § 1451(b)(1), (2); *see also* 47 U.S.C. § 309(j). The specified frequency bands are: 1915-1920 MHz, 1995-2000 MHz, 2155-2180 MHz, the fifteen megahertz of spectrum between 1675 and 1710 MHz to be identified by the National Telecommunications and Information Administration (“NTIA”) pursuant to 47 U.S.C. § 1451(a)(3), and the fifteen megahertz of contiguous spectrum to be identified by the Commission pursuant to 47 U.S.C. § 1451(b)(2)(E). The Commission completed its auction of the spectrum in the 1915-1920 MHz and 1995-2000 MHz bands on February 27, 2014. *See* Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Closes; Winning Bidder Announced for Auction 96, AU Docket No. 13-178, *Public Notice*, DA 14-279, 29 FCC Rcd 2044 (2014).

⁴ *See Identification of 15 Megahertz of Spectrum Between 1675 and 1710 MHz for Reallocation from Federal Use to Non-Federal Use Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012*, Report to the President, U.S. Department of Commerce (February 2013).

⁵ *See AWS-3 Report and Order*, 29 FCC Rcd at 4627, 4629 ¶¶ 33, 37.

⁶ 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); *see* 47 C.F.R. §§ 1.2104(c) and (d).

⁷ Auction of Advanced Wireless Services Licenses Scheduled For November 13, 2014; Comment Sought on Competitive Bidding Procedures For Auction 97, AU Docket No. 14-78, *Public Notice*, DA 14-669, 29 FCC Rcd 5217 (2014) (“*Auction 97 Comment Public Notice*”). A summary of this public notice was published at 79 Fed. Reg. 31327 (Jun. 2, 2014).

⁸ A listing of the parties that filed comments, reply comments, and *ex parte* notices can be found in Attachment C. In addition, one *erratum* and one *addendum* were filed. Commenters are identified in this Public Notice by the abbreviated names shown in Attachment C.

- Submission of a statement by each applicant for any license in the 1755-1780 MHz band acknowledging that it has considered and accepts the risks of potential interference from Federal systems to its planned operations in certain geographic zones;
- An aggregate reserve price for the 1695-1710 MHz license of approximately \$580 million and a separate aggregate reserve price for the paired 1755-1780 MHz/2155-2180 MHz licenses of approximately \$10.07 billion;
- Minimum opening bids for each license using a calculation based on \$0.15 per MHz-pop for paired licenses and \$0.05 per MHz-pop for unpaired licenses with a revision to our method for incorporating price information from past auctions;
- Minimum acceptable bid amounts based on an activity-based formula under which bids in subsequent rounds may be between 10-20% higher than the provisionally winning bid;
- Filing long-form applications in accordance with the schedule specified in the Commission's rules, but establishing a deadline for down payments and final payments from winning bidders that will occur no earlier than January 2015.

5. In addition, this Public Notice concludes that any requests for temporary, limited relief from the "former defaulter" rule are beyond the scope of this proceeding and notes that such requests are being addressed separately.

B. Description of Licenses to be Offered in Auction 97

6. The 65 megahertz of AWS-3 spectrum available in Auction 97 will be licensed on a geographic area basis. Of the 1,614 licenses offered in Auction 97, 880 will be Economic Area ("EA") licenses and 734 will be Cellular Market Area ("CMA") licenses.⁹ The AWS-3 frequencies will be licensed in five and ten megahertz blocks, with each license having a total bandwidth of five, ten, or twenty megahertz.¹⁰

7. The 1695-1710 MHz band will be licensed in an unpaired configuration for low-power mobile transmit (i.e., uplink) operations.¹¹ The 1755-1780 MHz band will be licensed paired with the 2155-2180 MHz band, with the 1755-1780 MHz band authorized for low-power mobile transmit (i.e., uplink) operations and the 2155-2180 MHz band authorized for base station and fixed (i.e., downlink) operations.¹²

8. Figure 1 shows the band plan for the 1695-1710 MHz band. Figure 2 shows the band plans for the 1755-1780 MHz and 2155-2180 MHz bands. Table 1 contains summary information

⁹ In the *AWS-3 Report and Order*, the Commission concluded that all licenses in the 1695-1710 MHz band, and most licenses in the 1755-1780 MHz and 2155-2180 MHz bands, should be awarded on an EA basis in all areas, including the Gulf of Mexico, and that all licenses in the 1755-1760 MHz and 2155-2160 MHz bands should be awarded on a CMA basis in all areas. See *AWS-3 Report and Order*, 29 FCC Rcd at 4612, 4621, 4632, 4633-34 ¶¶ 2, 20, 48, 51. There are a total of 176 EAs and 734 CMAs. Spectrum Financial Partners recommends auctioning all of the AWS-3 spectrum blocks available in Auction 97 on a CMA-basis. Spectrum Financial Partners Comments at 2. The requirement that all AWS-3 spectrum blocks except the G Block be licensed on an EA-basis was adopted by the Commission as a rule in the *AWS-3 Report and Order*. A Commission rule cannot be amended in the context of this proceeding establishing the procedures for Auction 97 because such action is outside of the scope of the Bureau's delegated authority. See 47 C.F.R. § 0.131.

¹⁰ See *AWS-3 Report and Order*, 29 FCC Rcd at 4633-34 ¶¶ 51-52.

¹¹ See *id.* at 4612, 4620-21, 4625 ¶¶ 2, 19, 29.

¹² See *id.* at 4612, 4630-32 ¶¶ 2, 41, 43-45. Higher-power fixed and base station operations are also prohibited in the 1755-1780 MHz band. See *id.* at 4630 ¶ 43.

regarding the AWS-3 licenses available in Auction 97. A complete list of the licenses offered in Auction 97 is available in Attachment A to this Public Notice.

Figure 1: 1695-1710 MHz Band Plan

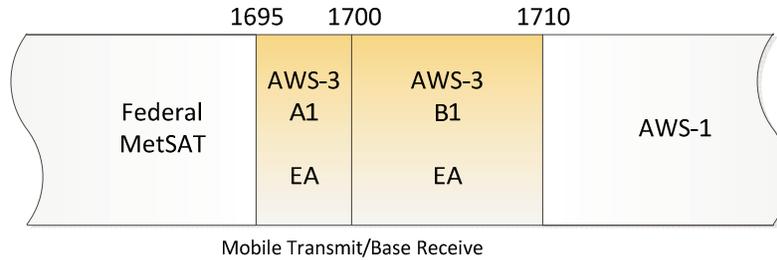


Figure 2: 1755-1780 and 2155-2180 MHz Band Plans

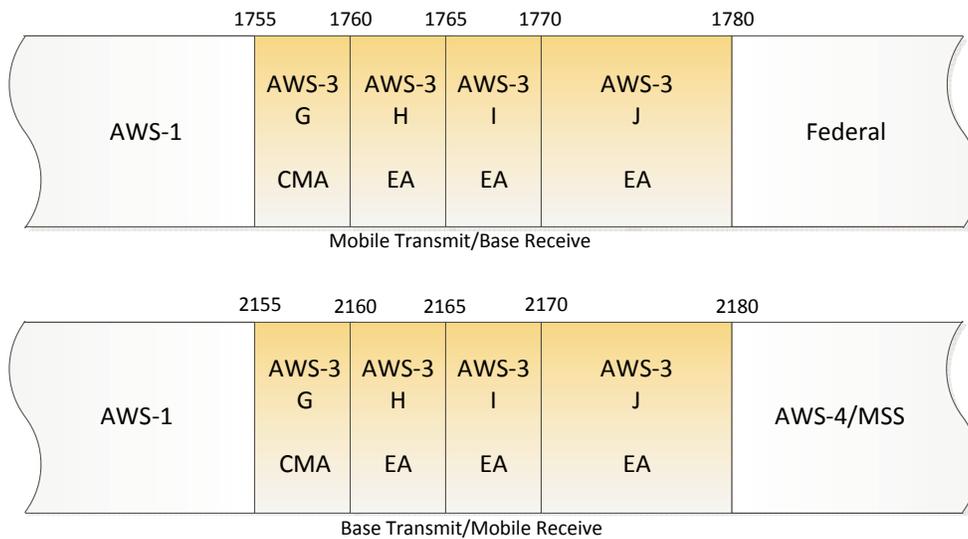


Table 1: AWS - 3 License Summary

| Block | Frequencies (MHz) | Total Bandwidth | Pairing | Geographic Area Type | Number of Licenses |
|-------|-------------------------|-----------------|------------|----------------------|--------------------|
| A1 | 1695-1700 MHz | 5 MHz | unpaired | EA | 176 |
| B1 | 1700-1710 MHz | 10 MHz | unpaired | EA | 176 |
| G | 1755-1760/2155-2160 MHz | 10 MHz | 2 x 5 MHz | CMA | 734 |
| H | 1760-1765/2160-2165 MHz | 10 MHz | 2 x 5 MHz | EA | 176 |
| I | 1765-1770/2165-2170 MHz | 10 MHz | 2 x 5 MHz | EA | 176 |
| J | 1770-1780/2170-2180 MHz | 20 MHz | 2 x 10 MHz | EA | 176 |

C. Rules and Disclaimers

1. Relevant Authority

9. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,¹³ including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁴ Prospective bidders should also familiarize themselves with the Commission's rules relating to the AWS-3 frequencies,¹⁵ including incumbency issues for AWS-3 licensees,¹⁶ Federal and non-Federal relocation and sharing and cost sharing obligations,¹⁷ protection of Federal and non-Federal incumbent operations,¹⁸ and rules relating to applications, environment, practice and procedure.¹⁹ All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be issued in this proceeding.

10. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from BCPI, the Commission's duplicating contractor.²⁰

2. Prohibited Communications and Compliance with Antitrust Laws

11. To ensure the competitiveness of the auction process, section 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless

¹³ See 47 C.F.R. Part 1, Subpart Q.

¹⁴ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (“*Part 1 Fifth Report and Order*”) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005).

¹⁵ See 47 C.F.R. Part 27.

¹⁶ See Section I.C.3. “Incumbency Issues,” below.

¹⁷ See Section I.C.3. “Incumbency Issues” and Section I.C.4 “Commercial Spectrum Enhancement Act/Spectrum Act Requirements,” below; 47 C.F.R. §§ 27.1160-1190, 27.1250-1255, 101.69-82.

¹⁸ See 47 C.F.R. §§ 27.1131, 27.1132, 27.1134; The Federal Communications Commission and the National Telecommunications and Information Administration: Coordination Procedures in the 1695-1710 MHz and 1755-1780 MHz Bands, *Public Notice*, GN Docket No. 13-185, DA 14-1023 (rel. Jul. 18, 2014) (“*FCC/NTIA Coordination Procedures Public Notice*”).

¹⁹ See 47 C.F.R. Part 1, Subpart I.

²⁰ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 14-31 for the *AWS-3 Report and Order*, or DA 14-669 for the *Auction 97 Comment Public Notice*).

such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to section 1.2105(a)(2)(viii).²¹

a. Entities Subject to Section 1.2105

12. Section 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.²² In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants ultimately become qualified bidders or actually bid.**²³

13. Applicants are also reminded that, for purposes of this prohibition on certain communications, section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.²⁴ For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of section 1.2105(c) occurs.²⁵

14. As described in Section IV.A.2., below, information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.²⁶

²¹ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

²² See, e.g., *Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders*, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (1996).

²³ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 ¶ 4 & n.19 (EB 2004), *order granted in part sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007) ("*Star and Northeast Review Order*"), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, DA 00-2905, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

²⁴ 47 C.F.R. § 1.2105(c)(7)(i).

²⁵ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB 2005) ("*Trinity*") (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

²⁶ Section IV.A.3. "Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction," below.

15. Individuals and entities subject to section 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

16. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating section 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.²⁷

17. Moreover, Auction 97 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of section 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation likewise could occur.²⁸ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.2105(c).²⁹

b. Prohibition Applies Until Down Payment Deadline

18. Section 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.³⁰

c. Prohibited Communications

19. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).³¹ Section 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy.³² While section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to

²⁷ 47 C.F.R. § 1.2105(c)(4). Specifically, the Commission's rules permit a party holding a non-controlling, attributable interest in one applicant to acquire an ownership interest in or enter into a joint bidding arrangement with other applicants after the short-form application filing deadline, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. 47 C.F.R. §§1.2105(c)(4)(i), (ii).

²⁸ See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78 ¶¶ 11-12 (1998) ("Nevada Wireless Order").

²⁹ *Id.*

³⁰ 47 C.F.R. § 1.2105(c)(1).

³¹ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-54 ¶ 12. For a discussion of the term "applicant" within the meaning of section 1.2105(c), see Section I.C.2.a. above.

³² See Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 ¶ 8 (1999).

directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.³³

20. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.”³⁴ Moreover, the Commission has found a violation of section 1.2105(c) where an applicant used the Commission’s bidding system to disclose “its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,”³⁵ and has placed auction participants on notice that the use of its bidding system “to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.”³⁶ Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as is the case for Auction 97, an applicant’s statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a section 1.2105(c) violation.³⁷ Similarly, an applicant’s public statement of intent not to participate in Auction 97 bidding could also violate the rule.

21. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of section 1.2105(c) that prohibit certain communications.³⁸ This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

22. In addition, when completing short-form applications, each applicant should avoid any statements or disclosures that may violate section 1.2105(c), particularly in light of the limited information procedures in effect for Auction 97.³⁹ Specifically, an applicant should avoid including any information in its short-form applications that might convey information regarding its license selection,

³³ In discussing ways to improve the auction procedures, AT&T states that section 1.2105(c)’s prohibiting “unnecessarily chill[s] secondary market activity and serves as a disincentive to auction participation without adding to the deterrent effect against collusion that the antitrust laws’ remedies – criminal and treble damages – provide.” AT&T Comments at 4. AT&T makes no specific request or proposal with respect to the rule, however, even if it had, the Commission’s rules cannot be amended in the context of this proceeding establishing the procedures for Auction 97 because such action is outside the scope of the Bureau’s delegated authority. See 47 C.F.R. § 0.131.

³⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“*Competitive Bidding Memorandum Opinion and Order*”).

³⁵ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974 ¶ 12, 17976 ¶ 17 (1997).

³⁶ Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁷ *Compare LMDS Auction Guidance Public Notice*, 13 FCC Rcd at 347-48 (“Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.”)

³⁸ Thus, communication by an applicant of its license selections to another applicant for one or more of the same licenses, or communication of the fact that an applicant does or does not hold provisionally winning bids on particular licenses, may well violate 47 C.F.R. § 1.2105(c).

³⁹ See Section IV.A.3. “Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction,” below.

such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose the applicant's license selections. Likewise, an Auction 97 applicant must not disclose to others whether it has filed the acknowledgement concerning interference obligations that is required of each applicant that seeks to bid on any license in the 1755-1780 MHz band, as that information would reveal information regarding its license selection.⁴⁰

d. Disclosure of Bidding Agreements and Arrangements

23. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications.⁴¹ Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.⁴²

24. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.⁴³

25. Section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants.⁴⁴ However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.⁴⁵

e. Section 1.2105(c) Certification

26. By electronically submitting a short-form application, each applicant in Auction 97 certifies its compliance with section 1.2105(c). In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid.⁴⁶ However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the

⁴⁰ See Section II.G., "Acknowledgement Statement for Auction 97 Applicants," below. The Bureau intends to withhold from public disclosure all information concerning the existence of such applicant statements until after the close of the auction.

⁴¹ 47 C.F.R. § 1.2105(c)(1).

⁴² 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

⁴³ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) ("*Anti-Collusion Public Notice*").

⁴⁴ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 ¶ 12 (2001).

⁴⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 ¶ 163 (1997) ("*Part 1 Third Report and Order*").

⁴⁶ 47 C.F.R. § 1.2105(a)(2)(ix).

initiation of an investigation when warranted.⁴⁷ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁴⁸ Any applicant found to have violated section 1.2105(c) may be subject to sanctions.⁴⁹

f. Duty to Report Prohibited Communications

27. Section 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁵⁰ The Commission has clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.⁵¹

28. In addition, section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.⁵² Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.2105(a)(2)(viii).⁵³

29. Sections 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.⁵⁴ These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.⁵⁵

g. Procedure for Reporting Prohibited Communications

30. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party’s report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

31. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering

⁴⁷ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁴⁸ *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

⁴⁹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁵⁰ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 ¶¶ 13-17.

⁵¹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15,289, 15,395 ¶¶ 285-86 (2007).

⁵² 47 C.F.R. § 1.65; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

⁵³ See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

⁵⁴ Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523 ¶ 8 (2010) (“*Part 1 Procedural Amendments Order*”).

⁵⁵ *Id.*

the Commission's auctions.⁵⁶ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.⁵⁷ For Auction 97, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Ms. Wiener at the following e-mail address: auction97@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

32. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.⁵⁸ Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.⁵⁹ This Public Notice provides additional guidance on procedures for submitting application-related information below.⁶⁰

h. Winning Bidders Must Disclose Terms of Agreements

33. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.⁶¹ Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

34. A summary listing of documents issued by the Commission and the Bureau addressing the application of section 1.2105(c) may be found in Attachment F. These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

j. Antitrust Laws

35. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁶² Compliance

⁵⁶ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 ¶ 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

⁵⁷ *Id.*

⁵⁸ See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459 (a).

⁵⁹ See Section VI. "Contact Information," below.

⁶⁰ See Section II.M. "Maintaining Current Information in Short-Form Applications," below.

⁶¹ 47 C.F.R. § 1.2107(d).

⁶² See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61 ¶ 4 & n.17 (1999) (continued....)

with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.⁶³ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.⁶⁴ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.⁶⁵ Similarly, the Bureau previously reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”⁶⁶

36. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁶⁷ If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁶⁸

3. Incumbency Issues

37. The AWS-3 bands are currently being used for a variety of government and non-government services. In the *AWS-3 Report and Order*, the Commission allocated the 1695-1710 MHz and 1755-1780 MHz bands for commercial use.⁶⁹ Licenses in 1695-1710 MHz band are being made available on a shared basis with incumbent Federal meteorological-satellite (MetSat) data users.⁷⁰ Licenses in the 1755-1780 MHz band are being made available on a shared basis with a limited number of Federal incumbents indefinitely, while some of the Federal systems will over time relocate out of the

(Continued from previous page) _____
quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12 (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission’s Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

⁶³ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12. See also Justice Department Sues Three Firms Over FCC Auction Practices, *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁶⁴ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134.

⁶⁵ *Id.* See also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2387 n.165.

⁶⁶ *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

⁶⁷ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁶⁸ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁶⁹ See *AWS-3 Report and Order*, 29 FCC Rcd at 4612, 4620, 4627, 4629, 4684-85, 4688 ¶¶ 2, 16, 33, 37, 198-200, 207. The Commission allocated the 1695-1710 MHz band for non-Federal fixed and mobile (except aeronautical mobile) use and the 1755-1780 MHz band for non-Federal fixed and mobile use. See *id.*, App. A; 47 C.F.R. § 2.106.

⁷⁰ See *AWS-3 Report and Order*, 29 FCC Rcd at 4612 ¶ 2. The Commission adopted twenty-seven Protection Zones for the 1695-1710 MHz band in the *AWS-3 Report and Order*, and the forty-seven Federal earth stations located in these Protection Zones will operate on a co-equal, primary basis with commercial AWS-3 licensees. See 47 C.F.R. § 2.106, US note 88. All other Federal earth stations operate on a secondary basis. See 47 C.F.R. § 2.106, US note 88(b). In order to facilitate coordination, uplink/mobile transmit devices in the 1695-1710 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. See *AWS-3 Report and Order*, 29 FCC Rcd at 4620-21, 4648 ¶¶ 19, 100-102.

band.⁷¹ Licenses to operate in the 1695-1710 MHz and 1755-1780 MHz bands are subject to the condition that the licensee must not cause harmful interference to an incumbent Federal entity relocating from these bands under an approved Transition Plan.⁷² This condition remains in effect until NTIA terminates the applicable authorization of the incumbent Federal entity.⁷³ In addition, AWS-3 licensees in the 1755-1780 MHz band must agree to accept interference from incumbent Federal users while they remain authorized to operate in the band.⁷⁴ The 2155-2180 MHz band is already allocated for exclusive non-Federal, commercial use. Although there are no Federal users currently licensed or operating in this band, there are non-Federal incumbent Fixed Microwave and Broadband Radio Service licensees in the band. AWS-3 licensees will have to protect or relocate and/or share in the cost of relocating such incumbent licensees.⁷⁵

38. AWS-3 licensees in the 1695-1710 MHz and 1755-1780 MHz bands are required to successfully coordinate with Federal incumbent users in these bands prior to operating in designated protection zones.⁷⁶ The *AWS-3 Report and Order* established that 1695-1710 MHz licensees operating at certain power levels would be required to coordinate with Federal incumbents in those protection zones, and higher-powered operations would generally require nationwide coordination.⁷⁷ Similarly, operations in the 1755-1780 MHz band are subject to successful coordination with Federal incumbents in the protection zones adopted for that band, with the default coordination zone being nationwide.⁷⁸ Prior to commencing operations in the 1755-1780 MHz band, an AWS-3 licensee must reach a coordination arrangement on an operator-to-operator basis with each Federal agency that has an assignment with United States and Possessions (“USP”) authority.⁷⁹ The *FCC/NTIA Coordination Procedures Public Notice* contains various refinements to the previously-defined protection zones for each of these bands.⁸⁰

⁷¹ See *AWS-3 Report and Order*, 29 FCC Rcd at 4612 ¶ 2. The Federal systems located in the Protection Zones adopted by the Commission for the 1755-1780 MHz band in the *AWS-3 Report and Order* will operate on a co-equal, primary basis with commercial AWS licensees. See 47 C.F.R. § 2.106, US note 91. The Federal systems that will relocate from the band pursuant to an approved transition plan will operate on a primary basis until they are reaccommodated. *Id.* In order to facilitate coordination, uplink/mobile transmit devices in the 1755-1780 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. See *AWS-3 Report and Order*, 29 FCC Rcd at 4631, 4648 ¶¶ 43, 100-102.

⁷² See *AWS-3 Report and Order*, 29 FCC Rcd at 4691-92 ¶ 219 and App. A; 47 C.F.R. § 27.5(h) (Note). See also 47 U.S.C. § 309(j)(16)(C).

⁷³ See *id.* Although this license condition does not apply to the permanent sharing scenario, the Commission’s rules require successful coordination to avoid causing harmful interference to these Federal incumbents. See 47 C.F.R. §§ 27.1134(c), (f).

⁷⁴ See 47 C.F.R. § 27.1134(f). See also *AWS-3 Report and Order*, 29 FCC Rcd at 4693 ¶ 222.

⁷⁵ See *AWS-3 Report and Order*, 29 FCC Rcd at 4682-83 ¶¶ 194-196 and App. A; 47 C.F.R. §§ 27.1111, 27.1131, 27.1132.

⁷⁶ See *AWS-3 Report and Order*, 29 FCC Rcd at 4692-93 ¶¶ 220-22 and App. A; 47 C.F.R. § 2.106, US notes 88 and 91; 47 C.F.R. §§ 27.1134(c), (f).

⁷⁷ See *AWS-3 Report and Order*, 29 FCC Rcd at 4620-21, 4645, 4692-93 ¶¶ 19, 90, 220-22 and App. A; 47 C.F.R. § 2.106, US note 88; 47 C.F.R. § 27.1134(c).

⁷⁸ See *AWS-3 Report and Order*, 29 FCC Rcd at 4645, 4692-93 ¶¶ 91, 220-222 and App. A; 47 C.F.R. § 2.106, US note 91; 47 C.F.R. § 27.1134(f).

⁷⁹ 47 C.F.R. § 27.1134(f)(1)(i).

⁸⁰ See *FCC/NTIA Coordination Procedures Public Notice* at Section III., “Refined Protection Zones Establishing Areas Where AWS-3 Licensees Must Successfully Coordinate with Federal Incumbents Operating Under Non-USP Assignments,” Section V., “Refined Protection Zones for 25 Satellite Earth Stations and Streamlined Coordination Option,” and Apps. A, B, C.

That Public Notice also provides information and guidance on the overall coordination process for these bands, as contemplated by the *AWS-3 Report and Order*, including informal pre-coordination discussion and the formal process of submitting coordination requests to, and receiving responses to coordination requests from, relevant Federal agencies.⁸¹ We encourage each potential applicant to carefully review these coordination requirements and the policies and procedures adopted by the Commission to implement them, and to consider the impact of those requirements and policies on its business plans.

4. Commercial Spectrum Enhancement Act/Spectrum Act Requirements

39. The spectrum in the 1695-1710 MHz and 1755-1780 MHz bands is covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation or sharing costs of incumbent Federal entities.⁸² In 2004, the Commercial Spectrum Enhancement Act (“CSEA”) established a Spectrum Relocation Fund (“SRF”) to reimburse eligible Federal agencies operating on certain frequencies that have been reallocated from Federal to non-Federal use for the cost of relocating their operations.⁸³ The SRF is funded with cash proceeds attributable to “eligible frequencies” in an auction of licenses involving such frequencies.⁸⁴ The CSEA requires the NTIA to notify the Commission at least six months in advance of a scheduled auction of eligible frequencies of eligible Federal entities’ estimated relocation or sharing costs and the timelines for such relocation or sharing.⁸⁵

40. On May 13, 2014, pursuant to the CSEA, the NTIA notified the Commission of the estimated relocation or sharing costs and relocation timelines for eligible Federal entities assigned to frequencies in the 1695-1710 MHz and 1755-1780 MHz bands.⁸⁶ The NTIA reported that the total estimated relocation or sharing costs for the 1695-1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755-1780 MHz band equal \$4,575,603,000.⁸⁷

41. In addition to requiring that specified auction proceeds be deposited in the SRF, the CSEA, as amended by the Spectrum Act, requires that the total cash proceeds from any auction of eligible frequencies must equal at least 110 percent of the estimated relocation or sharing costs provided to the Commission by NTIA, and prohibits the Commission from concluding any auction of eligible frequencies

⁸¹ See *FCC/NTIA Coordination Procedures Public Notice* at Section IV., “Coordination Process Guidance.”.

⁸² See 47 U.S.C. §§ 309(j)(8)(D), 923(g).

⁸³ See 47 U.S.C. § 928.

⁸⁴ See 47 U.S.C. §§ 309(j)(8)(D), 928(b). “Eligible frequencies” are defined as those in the 216-220 MHz, 1432-1435 MHz, 1710-1755 MHz and 2385-2390 MHz bands, as well as any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003 that is assigned by the Commission through competitive bidding pursuant to Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j). See 47 U.S.C. § 923(g)(2).

⁸⁵ See 47 U.S.C. § 923(g)(4). The Spectrum Act amendments to the CSEA require Federal agencies authorized to use eligible frequencies to submit a transition plan no later than 240 days before an auction for such frequencies is scheduled to begin. See 47 U.S.C. § 923(h)(1). The Federal agency transition plans are reviewed by a Technical Panel, which must submit a report on the sufficiency of each transition plan to the NTIA and the applying Federal agency no later than 30 days after submission of the plan. See 47 U.S.C. § 923(h)(4)(A); see 47 C.F.R. § 301.120(a). If the Technical Panel finds a Federal agency’s plan to be insufficient with respect to the execution, timing, or cost of the agency’s planned transition, the agency must submit a revised plan within 90 days. See 47 U.S.C. § 923(h)(4)(B). The NTIA must make the transition plans available on its website (with the exception of any classified information contained therein) no later than 120 days before the auction’s scheduled start date. See 47 U.S.C. § 923(h)(5).

⁸⁶ See 47 U.S.C. § 923(g)(4)(A).

⁸⁷ Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Tom Wheeler, Chairman, Federal Communications Commission at Attachments B1 and B2 (May 13, 2014) (“*NTIA May 13 Notification Letter*”), available at <http://www.ntia.doc.gov/category/aws-3-transition>.

that falls short of this revenue requirement.⁸⁸ In the *CSEA/Part 1 Declaratory Ruling*, the Commission determined, among other things, that “total cash proceeds” for purposes of meeting the CSEA’s revenue requirement means winning bids net of any applicable bidding credit discounts at the end of bidding.⁸⁹ Thus, whether CSEA’s revenue requirements regarding eligible frequencies have been met at the end of an auction involving such frequencies depends upon whether winning bids that are attributable to such spectrum, net of any applicable bidding credit discounts, equal at least 110 percent of estimated relocation costs. In the *CSEA/Part 1 Report and Order*, the Commission, among other things, modified its reserve price rule pursuant to the CSEA to ensure that the CSEA’s revenue requirement would be met.⁹⁰

5. International Coordination

42. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the AWS-3 frequencies they acquire in the auction are subject to international agreements with Canada and Mexico.⁹¹ As the Commission noted in the *AWS-3 Report and Order*, the Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico.⁹² Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the AWS-3 frequency bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.⁹³

6. Quiet Zones

43. AWS-3 licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission’s rules.⁹⁴

7. Spectrum Screen for Competitive Review of Secondary Market Transactions

44. In its recent *Mobile Spectrum Holdings Report and Order*, the Commission concluded that, instead of administering its case-by-case review of auction winners’ mobile spectrum holdings at the long-form application stage, it would determine prior to an auction whether an *ex ante* application of a band-specific mobile spectrum holding limit is necessary for the initial licensing of a band through competitive bidding.⁹⁵ For the initial licensing of the AWS-3 band through competitive bidding, the

⁸⁸ See 47 U.S.C. § 309(j)(16)(A), (B).

⁸⁹ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Declaratory Ruling and Notice of Proposed Rule Making*, 20 FCC Rcd 11268, 11270-72 ¶¶ 5-12 (2005).

⁹⁰ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, *Report and Order*, 21 FCC Rcd 891, 894 ¶¶ 6-7 (2006) (“*CSEA/Part 1 Report and Order*”); 47 C.F.R. § 1.2104(c).

⁹¹ See *AWS-3 Report and Order*, 29 FCC Rcd at 4650 ¶ 106; 47 C.F.R. § 27.57(c).

⁹² *AWS-3 Report and Order*, 29 FCC Rcd at 4650 ¶ 106.

⁹³ *Id.*

⁹⁴ 47 C.F.R. § 1.924.

⁹⁵ See In the Matter of Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, WT Docket No. 12-269; GN Docket No. 12-268, FCC 14-63, at ¶ 139 (rel. Jun. 2, 2014) (“*Mobile Spectrum Holdings Report and Order*”).

Commission found that, on balance, it is not in the public interest to adopt a band-specific mobile spectrum holdings limit.⁹⁶

45. The Commission observed that, notwithstanding whether a band-specific mobile spectrum holding limit is applied to the initial licensing of a band through competitive bidding, the band would be included in the Commission's application of its spectrum screen for competitive review of subsequent secondary market transactions if the band is deemed suitable and available for the provision of mobile telephony/mobile broadband services.⁹⁷ Further, in the *Mobile Spectrum Holdings Report and Order*, the Commission updated its spectrum screen to reflect the current suitability and availability of spectrum for the provision of mobile telephony/broadband services.⁹⁸ In particular, in its consideration of AWS-3 spectrum, the Commission added the 65 megahertz of AWS-3 spectrum being offered in Auction 97 to the spectrum screen on a market-by-market basis as it becomes available.⁹⁹ We encourage each potential Auction 97 applicant to carefully review the *Mobile Spectrum Holdings Report and Order* to understand how these policies might apply to its particular situation.

8. Due Diligence

46. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations, and that the Commission's statutory authority, under the Communications Act, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise.¹⁰⁰ In addition, a Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

47. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders and public notices establishing rules and policies for the AWS-3 bands,¹⁰¹ including incumbency issues for AWS-3 licensees,¹⁰² Federal and non-Federal relocation and

⁹⁶ See *Mobile Spectrum Holdings Report and Order* at ¶¶ 222-224.

⁹⁷ See *Mobile Spectrum Holdings Report and Order* at note 422. The Commission's spectrum screen is a tool used to help achieve the Commission's policy of facilitating access to spectrum in a manner that promotes competition. In its competitive review of secondary market transactions, the Commission applies an initial screen to help identify for case-by-case review local markets where changes in spectrum holdings resulting from the proposed transaction may be of particular concern. See *Mobile Spectrum Holdings Report and Order* at ¶ 13.

⁹⁸ See *Mobile Spectrum Holdings Report and Order* at ¶¶ 4, 70-134.

⁹⁹ See *Mobile Spectrum Holdings Report and Order* at ¶¶ 4, 100-102, 218-24. Because the timing and extent of access by commercial licensees to the 1695-1710 MHz and 1755-1780 MHz bands in particular markets will depend, in part, on the timelines set in the Transition Plans for relocating Federal incumbent users, the spectrum in these bands will be counted in the spectrum screen in a particular market once all relocating Federal incumbent systems in that market are within three years of completing relocation according to the Transition Plans. *Id.* at ¶ 102. Spectrum in the 2155-2180 MHz band will be counted in the spectrum screen for a particular market at the same time the Commission counts the paired 1755-1780 MHz band in that market in the screen. *Id.* at ¶ 101.

¹⁰⁰ See 47 U.S.C. §§ 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

¹⁰¹ See, e.g., authorities cited at note 1, above.

¹⁰² See Section I.C.3., "Incumbency Issues," above.

sharing and cost sharing obligations,¹⁰³ and protection of Federal and non-Federal incumbent operations.¹⁰⁴ Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 97 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.¹⁰⁵

48. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 97 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 97 to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

49. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission — including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review — may relate to particular applicants or the licenses available in Auction 97 (or the terms and conditions thereof, including all applicable Commission rules and regulations). Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

50. We call special attention in this auction to the requirements presented by the temporary and indefinite sharing of portions of the AWS-3 bands by incumbent Federal users and AWS-3 licensees, which may vary by geography and frequency. As discussed above, the *FCC/NTIA Coordination Procedures Public Notice* contains additional information regarding the extent of sharing in the AWS-3 bands, refinements to the protection zones adopted in the *AWS-3 Report and Order*, and information and guidance on the overall coordination process between commercial and Federal users. Additionally, the CSEA, as amended by the Spectrum Act, stipulates that Federal agencies will receive reimbursement for their costs in relocating their operations from, or sharing, the “eligible frequencies” offered in this auction based on their approved transition plans, which the NTIA will make available to the public.¹⁰⁶ We expect that the information in both the *FCC/NTIA Coordination Procedures Public Notice* and the federal agency transition plans will be material to an applicant's potential participation in Auction 97. Therefore, we strongly encourage each applicant to closely review these materials, as well as future releases from the Commission and the NTIA concerning these issues, and to carefully consider the technical and economic implications for commercial use of the AWS-3 bands.

51. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 97. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs.

¹⁰³ See Section I.C.3. “Incumbency Issues” and Section I.C.4 “Commercial Spectrum Enhancement Act/Spectrum Act Requirements,” below; 47 C.F.R. §§ 27.1160-1190, 27.1250-1255, 101.69-82.

¹⁰⁴ See 47 C.F.R. §§ 27.1131, 27.1132, 27.1134; see generally *FCC/NTIA Coordination Procedures Public Notice*.

¹⁰⁵ 47 C.F.R. Chapter 1, Part 1, Subpart I.

¹⁰⁶ See Section I.C.4., “Commercial Spectrum Enhancement Act/Spectrum Act Requirements,” above.

Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

9. Use of Integrated Spectrum Auction System

52. Bidders will be able to participate in Auction 97 over the Internet using the Commission's web-based Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

10. Fraud Alert

53. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 97 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

The amount of investment is less than \$25,000.

The sales representative makes verbal representations that (a) the Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

54. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

the FCC's Consumer Call Center at (888) 225-5322 or by visiting
<http://wireless.fcc.gov/csinfo#fraud>

the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting
<http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>

the SEC at (202) 942-7040 or by visiting
<http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information>.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

11. Environmental Review Requirements

55. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.¹⁰⁷ The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility.¹⁰⁸ These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.¹⁰⁹ The licensee must prepare an environmental assessment for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, surface features, or migratory birds. In addition, the licensee must prepare an environmental assessment for any facility that includes high intensity white lights in residential neighborhoods or excessive radio frequency emission.

D. Auction Specifics

1. Auction Start Date

56. Bidding in Auction 97 will begin on Thursday, November 13, 2014. Pre-auction dates and deadlines are listed below.

57. The initial schedule for bidding rounds will be announced by public notice at least one week before the auction starts. Moreover, unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

58. Auction 97 – AWS-3

3. Bidding Methodology

59. As discussed in more detail below, the bidding methodology for Auction 97 will be a simultaneous multiple round format.¹¹⁰ The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

60. The following dates and deadlines apply:

| | |
|---|----------------------------------|
| Auction Tutorial Available (via Internet) | August 28, 2014 |
| Short-Form Application (FCC Form 175) | |
| Filing Window Opens | August 28, 2014; 12:00 noon ET |
| Short-Form Application (FCC Form 175) | |
| Filing Window Deadline..... | September 12, 2014; 6:00 p.m. ET |
| Upfront Payments (via wire transfer)..... | October 15, 2014; 6:00 p.m. ET |

¹⁰⁷ 47 C.F.R. Chapter 1, Part 1, Subpart I.

¹⁰⁸ 47 C.F.R. §§ 1.1301-1.1319.

¹⁰⁹ 47 C.F.R. Part 1, Appendix C.

¹¹⁰ See Section IV.A.1.a. "Simultaneous Multiple Round Auction," below.

| | |
|---------------------|-------------------|
| Mock Auction | November 10, 2014 |
| Auction Begins..... | November 13, 2014 |

61. In order to provide sufficient time for Commission staff to complete review of short-form applications and for Auction 97 applicants to work with staff to address any deficiencies with their applications, we are unable to grant in full the joint request of CCA, CTIA, and NTCA to set a short-form deadline of September 24, 2014. Those parties assert setting the deadline near the end of that month would facilitate the association members' ability to participate in business negotiations and panel discussions, including panels on the AWS-3 auction, at industry conferences scheduled during September 2014 without risk of running afoul of section 1.2105(c)'s prohibited communications period.¹¹¹ We understand that two of three of those events will have concluded by September 12, 2014, which is the alternative date they request.

5. Requirements for Participation

62. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on September 12, 2014, following the electronic filing procedures set forth in Attachment D to this Public Notice;
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on October 15, 2014, following the procedures and instructions set forth in Attachment E to this Public Notice; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

A. General Information Regarding Short-Form Applications

63. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.¹¹² The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications.¹¹³ Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.¹¹⁴ In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.¹¹⁵

64. Every entity and individual seeking a license available in Auction 97 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on September 12,

¹¹¹ See Letter from Rebecca Murphy Thompson, General Counsel, CCA *et al.*, to Marlene Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78, GN Docket No. 13-185, and RM-11395 (filed June 6, 2014) at 2.

¹¹² 47 C.F.R. §§ 1.2105.

¹¹³ *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 165.

¹¹⁴ Section III.D. "Upfront Payments – Due October 15, 2014," below.

¹¹⁵ 47 C.F.R. §§ 1.2107.

2014, following the procedures prescribed in Attachment D to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing, as described above.

65. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.¹¹⁶ Each applicant should read carefully the instructions set forth in Attachment D to this Public Notice and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.

66. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications for any license(s) in the same or overlapping geographic area(s), only one of its applications can be found to be complete when reviewed for completeness and compliance with the Commission's rules.

67. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.¹¹⁷ Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

68. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline.¹¹⁸ The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

C. Disclosure of Bidding Arrangements

69. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.¹¹⁹

70. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid.¹²⁰ If an applicant has had discussions, but has not reached an agreement by the short-form application filing

¹¹⁶ 47 C.F.R. § 1.2105(a)(2)(v).

¹¹⁷ See 47 C.F.R. § 1.2105(b).

¹¹⁸ 47 C.F.R. § 1.2105(b)(2).

¹¹⁹ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

¹²⁰ 47 C.F.R. § 1.2105(a)(2)(ix).

deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.¹²¹

71. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹²² While section 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, we remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹²³ Further, as discussed above, compliance with the disclosure requirements of section 1.2105(c) of the Commission's rules will not insulate a party from enforcement of the antitrust laws.¹²⁴

D. Ownership Disclosure Requirements

72. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by sections 1.2105 and 1.2112 of the Commission's rules.¹²⁵ Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in sections 1.2105 and 1.2112 of the Commission's rules.¹²⁶ Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

73. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Foreign Ownership Disclosure Requirements

74. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.¹²⁷ The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements

¹²¹ Section I.C.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

¹²² 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

¹²³ Section I.C.2. "Prohibited Communications and Compliance with Antitrust Laws," above; *see* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 ¶ 163 (1997) ("*Part 1 Third Report and Order*").

¹²⁴ *Id.*

¹²⁵ 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.

¹²⁶ 47 C.F.R. §§ 1.2105, 1.2112.

¹²⁷ *See* 47 U.S.C. §§ 310(a), (b).

under the Commission's secondary market rules.¹²⁸ In completing the short-form application (FCC Form 175), an applicant will be required to disclose information concerning any foreign ownership of the applicant. An applicant must certify in its short-form application that, as of the deadline for filing a short-form application to participate in Auction 97, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.¹²⁹

F. National Security Certification Requirement for Auction 97 Applicants

75. Section 6004 of the Spectrum Act prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act.¹³⁰ In 2013, the Commission amended its rules to implement this mandate by adding a certification to the various other certifications that a party must make in any short-form application.¹³¹ Pursuant to this rule, any applicant seeking to participate in Auction 97 must certify in its short-form application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction.¹³² As with other required certifications, an auction applicant's failure to include the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.¹³³

G. Acknowledgement Statement for Auction 97 Applicants

76. We adopt our proposal to require each applicant selecting any license in the 1755-1780 MHz band to submit with its short-form application a signed statement acknowledging that the applicant's operations the 1755-1780 MHz band may be subject to interference from Federal systems, that the applicant must accept interference from incumbent Federal operations, and that the applicant has considered these risks before submitting any bids for applicable licenses in Auction 97.¹³⁴ The specific text that must be included in the required acknowledgement statement is contained in Attachment G to this Public Notice.¹³⁵ The acknowledgement statement must be signed by the same individual that signs the application on behalf of the applicant.

¹²⁸ See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Second Report and Order*, FCC 13-50, 28 FCC Rcd 5741, 5747-48 ¶ 7 (2013) ("*Foreign Ownership Second Report and Order*").

¹²⁹ See 47 C.F.R. § 1.2105(a)(2)(v), (vi). See Attachment D, "Short-Form Application Filing Instructions," below for additional information concerning foreign ownership disclosure requirements.

¹³⁰ See 47 U.S.C § 1404.

¹³¹ See 47 C.F.R. § 1.2105(a)(2)(xii). See also Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, *Report and Order*, FCC 13-88, 28 FCC Rcd 9483, 9577-78 ¶¶ 253-54 (2013); *AWS-3 Report and Order*, 29 FCC Rcd at 4677 ¶ 182.

¹³² See 47 C.F.R. § 1.2105(a)(2)(xii).

¹³³ 47 C.F.R. § 1.2105(b)(1).

¹³⁴ See *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5225 ¶ 24.

¹³⁵ Guidance on submitting the acknowledgement statement can be found in Sections I.C.7. and 8. of Attachment D to this Public Notice.

77. As discussed above, incumbent Federal users are currently operating in the 1695-1710 MHz and 1755-1780 MHz bands.¹³⁶ In the *AWS-3 Report and Order*, the Commission adopted rules to address commercial operations in these bands in light of the temporary and indefinite sharing of the bands by Federal incumbent users and commercial licensees, including a requirement that commercial licensees operate on a co-equal, primary operations with Federal systems,¹³⁷ and a requirement that licensees in the 1755-1780 MHz band accept interference from Federal systems as long as such systems remain in the band.¹³⁸

78. We disagree with the recommendation of Spectrum Financial Partners that we should not require an acknowledgement on the grounds that this would be an unnecessary paperwork burden and applicant's acceptance of such interference obligations is already adequately covered by the due diligence instructions that apply to all auctions.¹³⁹ As both T-Mobile and AT&T recognize, it may be useful for each bidder for these frequencies to sign a statement acknowledging that it has given consideration to potential interference issues for this band.¹⁴⁰ AT&T and T-Mobile request that the required statement be narrowly drafted, and seek assurances that the acknowledgement does not give rise to any new obligations for the 1755-1780 MHz band beyond those set out in the Commission's rules.¹⁴¹ They also encourage the Commission to promote disclosure by federal agencies of as much information as possible about the potential interference environment.¹⁴² We note that the text of the acknowledgement statement is narrowly tailored and expressly states that it "does not supersede the licensee's rights and obligations specified by law, rule, or other Commission action."¹⁴³

H. Designated Entity Provisions

79. Eligible applicants in Auction 97 may claim small business bidding credits. In addition to the information provided below, applicants should review carefully the Commission's decisions regarding the designated entity provisions.¹⁴⁴

¹³⁶ See Section I.C.3, "Incumbency Issues," above.

¹³⁷ See 47 C.F.R. § 2.106, US note 88 and US note 91.

¹³⁸ See 47 C.F.R. §27.1134(f). See also 47 C.F.R. § 2.106, US note 91.

¹³⁹ See Spectrum Financial Partners Comments at 2.

¹⁴⁰ See T-Mobile Comments at 6-7; AT&T Reply Comments at 13.

¹⁴¹ T-Mobile Comments at 7-9; AT&T Reply Comments at 13-15. Specifically, AT&T and T-Mobile seek clarification that (1) the acknowledgement does not mean that federal users may remain on spectrum that they are obligated to clear, (2) commercial licensees are no longer subject to potential interference after NTIA withdraws a federal authorization for the AWS-3 bands, (3) signing the acknowledgement is not intended to dissuade federal agencies from entering into agreements with auction winners for commercial use of the AWS-3 bands, (4) the acknowledgement does not require auction participants to engage in coordination with federal users in order to accept interference from them, and (5) the coordination procedures are different from the notification procedures that may be voluntarily implemented consistent with the required acknowledgement and Section 27.1134(f) of the Commission's rules. T-Mobile Comments at 7-9; AT&T Reply Comments at 13-15.

¹⁴² T-Mobile Comments at 6; AT&T Reply Comments at 13.

¹⁴³ See Appendix G to this Public Notice (text of acknowledgement to be signed by applicants for 1755-1780 MHz licenses); Section I.C.3., "Incumbency Issues," above.

¹⁴⁴ See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"); *Second Report and Order and Second Further Notice of Proposed Rule Making*, FCC 06-52, 21 FCC Rcd 4753 (2006) ("*CSEA/Part 1 Second Report and Order*"), recon. pending; *Order on Reconsideration of the Second Report and Order*, FCC 06-78, 21 FCC Rcd 6703 (2006) ("*CSEA/Part 1 Second Report and Order's First Reconsideration Order*").

1. Bidding Credits for Small Businesses

80. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 97, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

81. In the *AWS-3 Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the AWS-3 bands.¹⁴⁵

82. The level of bidding credit is determined as follows:

- A bidder with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years will receive a 15 percent discount on its winning bid.¹⁴⁶
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid.¹⁴⁷

83. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.¹⁴⁸

b. Revenue Disclosure on Short-Form Application

84. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship.¹⁴⁹ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.¹⁵⁰

2. Attributable Interests

a. Controlling Interests

85. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.¹⁵¹ The following are some common indicia of *de facto* control:

¹⁴⁵ See *AWS-3 Report and Order*, 29 FCC Rcd at 4680-81 ¶ 189.

¹⁴⁶ See 47 C.F.R. §§ 1.2110(f)(2)(iii), 27.1106(a)(1), (b).

¹⁴⁷ See 47 C.F.R. §§ 1.2110(f)(2)(ii), 27.1106(a)(2), (b).

¹⁴⁸ See 47 C.F.R. § 1.2111.

¹⁴⁹ 47 C.F.R. §§ 1.2110(b)(1)(i), 1.2110(b)(3)(iv)(B). See also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27 ¶¶ 59-67.

¹⁵⁰ 47 C.F.R. §§ 1.2110(b)(3)(i), 1.2110(b)(6), 1.2110(k).

¹⁵¹ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. § 1.2110(b)(5); see also *Intermountain Microwave, Public Notice*, 12 FCC 2d 559, 560, Report No. 1142 (1963); *Application of Baker Creek Communications, L.P., Memorandum Opinion and Order*, DA 98-1921, 13 FCC Rcd 18709 (1998).

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.¹⁵²

86. Applicants should refer to section 1.2110(c)(2) of the Commission’s rules and Attachment D of this Public Notice to understand how certain interests are calculated in determining control. For example, pursuant to section 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.¹⁵³

b. Affiliates

87. Affiliates of an applicant or controlling interest include an individual or entity that (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an “identity of interest” with the applicant.¹⁵⁴ The Commission’s definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.¹⁵⁵ For more information regarding affiliates, applicants should refer to section 1.2110(c)(5) and Attachment D to this Public Notice.

c. Material Relationships

88. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships — referred to as “attributable material relationships” — in determining designated entity eligibility for bidding credits.¹⁵⁶ An applicant or licensee has an “attributable material relationship” when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant’s or licensee’s (i) eligibility for designated entity benefits and (ii) liability for “unjust enrichment”¹⁵⁷ on a license-by-license basis.¹⁵⁸

89. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity’s ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant’s or licensee’s designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable

¹⁵² 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

¹⁵³ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹⁵⁴ 47 C.F.R. § 1.2110(c)(5).

¹⁵⁵ *Id.*

¹⁵⁶ *See Council Tree Communications, Inc. v. FCC*, 619 F.3d 235 (3d Cir. 2010) (affirming attributable material relationship rule and vacating impermissible material relationship rule).

¹⁵⁷ The repayment obligations of designated entities are governed by a five-year unjust enrichment schedule. *Id.*, 619 F.3d at 258 (vacating ten-year unjust enrichment schedule).

¹⁵⁸ *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; *see also CSEA/Part 1 Second Report and Order’s First Reconsideration Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(B), 1.2111(d).

eligibility events. Rather, in such circumstances, the Commission reexamines the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.¹⁵⁹

d. Gross Revenue Exceptions

90. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.¹⁶⁰

91. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(3)(iii) of the Commission's rules are met.¹⁶¹ An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.¹⁶² Applicants seeking to claim this exemption must meet all of the conditions.¹⁶³ Additional guidance on claiming this exemption may be found in Attachment D to this

¹⁵⁹ 47 C.F.R. § 1.2110(b)(3)(iv)(C); *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4764 ¶¶ 28-29; *see CSEA/Part 1 Second Report and Order's First Reconsideration Order*, 21 FCC Rcd at 6713-14 ¶¶ 27-29; *but see* the additional grandfathering provision in section 1.2110(b)(3)(iv)(C)(2) for the material relationships of those entities that are an applicant's affiliates based solely on 47 C.F.R. § 1.2110(c)(5)(i)(C). *See also* 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2); *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4764-65 ¶ 30. The Commission has recently waived the bright-line application of section 1.2110(b)(3)(iv)'s attributable material relationship rule that would otherwise trigger the automatic attribution of the lessee's gross revenues to a designated entity ("DE") applicant, where its leased licenses were not subject to DE benefits and, at the time the leases became effective, the DE applicant held no other licenses subject to DE benefits. *See* Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, *Order*, WT Docket No. 05-211; GN Docket Nos. 12-268 and 13-185, FCC 14-103 (rel. Jul. 23, 2014). To the extent that the requesting entity and any other similarly situated parties certify that they are qualified to claim DE benefits in any upcoming auction and become winning bidders, they will be required to demonstrate at the long-form application stage that the specific facts and circumstances of their spectrum lease agreements do not require attribution of the lessees' gross revenues in their respective cases. *Id.*

¹⁶⁰ *See* 47 C.F.R. § 1.2110(c)(2)(ii)(F). *See also Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10185-86 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. *Id.*, 18 FCC Rcd at 10186 ¶ 9.

¹⁶¹ *Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10186-94 ¶¶ 10-18; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942, 1945-46 ¶ 9 (2005) ("*Fifth Report and Order's Second Reconsideration Order*").

¹⁶² 47 C.F.R. § 1.2110(b)(3)(iii). *See also Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1949-50 ¶ 18.

¹⁶³ *See Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10186-95 ¶¶ 10-20; *see also Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1945-46 ¶ 9.

Public Notice.

e. Bidding Consortia

92. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business.¹⁶⁴ Thus, each member of a consortium of small businesses that applies to participate in Auction 97 must individually meet the criteria for small businesses, as set forth above.¹⁶⁵ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business,¹⁶⁶ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹⁶⁷

3. Installment Payments

93. Installment payments will not be available in Auction 97.

I. Tribal Lands Bidding Credit

94. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications. This process is described in Section V.E. "Tribal Lands Bidding Credit," below.

J. Provisions Regarding Former and Current Defaulters

95. Current defaulters or delinquents are not eligible to participate in Auction 97, but former defaulters or delinquents can participate so long as they are otherwise qualified and, as discussed in Section III.D.3. below, make upfront payments that are fifty percent more than would otherwise be necessary.¹⁶⁸ An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

96. Four trade associations have jointly requested that the Commission grant a limited,

¹⁶⁴ 47 C.F.R. § 1.2110(c)(6).

¹⁶⁵ *Id.*

¹⁶⁶ 47 C.F.R. § 1.2110(b)(3)(i).

¹⁶⁷ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and 47 C.F.R. §§ 1.2107(g) and 1.2110(b)(3) to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹⁶⁸ 47 C.F.R. §§ 1.2105(a)(2)(x), (xi), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 & n.142 ("If any one of an applicant's controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.")

temporary waiver of the Commission's "former defaulter" rule, 47 C.F.R. § 1.2106(a), as to two categories of debt for Auction 97 applicants.¹⁶⁹ We conclude that any requests for temporary, limited relief from the "former defaulter" rule are beyond the scope of this Public Notice, which is limited to establishing procedures for the upcoming auction of AWS-3 licenses. We note, however, that such requests are being addressed separately.

97. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by section 1.2110 of the Commission's rules,¹⁷⁰ are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.¹⁷¹ Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁷² Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

98. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹⁷³ For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁷⁴ Therefore, with respect to regulatory or application fees, the provisions of sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁷⁵ Parties are also encouraged to

¹⁶⁹ See Letter from Rebecca Murphy Thompson, General Counsel, CCA *et al.*, to Marlene Dortch, Secretary, Federal Communications Commission, RM-11395, GN Docket Nos. 13-185 and 12-268, and AU Docket No. 14-78 (filed May 30, 2014); see also CCA/CTIA/NTCA June 6, 2014 Joint *Ex Parte* at 2-3. Several parties support the relief requested by these trade associations and their proposed modifications to the rule. See DISH Comments at 19-20; Spectrum Financial Partners Comments at 3; Verizon Wireless Comments at 3-4; AT&T Reply Comments at 17-18; Letter from Stacey G. Black, Assistant Vice President, Federal Regulatory, External and Legislative Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78 (filed July 15, 2014); Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78 (filed July 16, 2014) at 1. We encourage potential Auction 97 applicants to monitor any releases in the referenced proceedings. See Section I.C.8. "Due Diligence," above.

¹⁷⁰ 47 C.F.R. § 1.2110.

¹⁷¹ 47 C.F.R. § 1.2105(a)(2)(x); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 & n.142.

¹⁷² 47 C.F.R. § 1.2105(a)(2)(xi); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

¹⁷³ Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements, *Public Notice*, DA 04-3491, 19 FCC Rcd 21920 (2004) ("*Auction Default Disclosure Public Notice*"). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁷⁴ Letter to Cheryl A. Tritt, Esq., from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 04-3685, 19 FCC Rcd 22907 (2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁷⁵ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

99. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.¹⁷⁶ Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule.¹⁷⁷ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

100. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹⁷⁸ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

101. Moreover, prospective applicants in Auction 97 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule,¹⁷⁹ and such review may result in the dismissal of a winning bidder's long-form application.¹⁸⁰

K. Optional Applicant Status Identification

102. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),¹⁸¹ and rural telephone companies, as defined in section 1.2110(c)(4),¹⁸² may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹⁸³

¹⁷⁶ Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹⁷⁷ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi) and states that "[t]hese rules are not affected by the red light rule.")

¹⁷⁸ *Auction Default Disclosure Public Notice*, DA 04-3491, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

¹⁷⁹ *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1114.

¹⁸⁰ Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹⁸¹ 47 C.F.R. § 1.2110(c)(3).

¹⁸² 47 C.F.R. § 1.2110(c)(4).

¹⁸³ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

L. Minor Modifications to Short-Form Applications

103. After the deadline for filing initial applications, an Auction 97 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline.¹⁸⁴ Thus, any change in control of an applicant — resulting from a merger, for example — will be considered a major modification, and the application will consequently be dismissed.¹⁸⁵

104. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.¹⁸⁶

105. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and license selections.

106. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction97@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 97 and the name of the applicant, for example, "Re: Changes to Auction 97 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to e-mail as Adobe[®] Acrobat[®] (PDF) or Microsoft[®] Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

107. As with the short-form application, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

108. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 97. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information procedures adopted for Auction 97.¹⁸⁷ A party

¹⁸⁴ 47 C.F.R. § 1.2105(b); *see also* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, FCC 99-189, 14 FCC Rcd 12035 (1999) ("*Two Way Radio*") (auction applicant not allowed to change its designated entity status after application filing deadline).

¹⁸⁵ We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 C.F.R. § 1.2105(c) until the down-payment deadline, which will be established after the auction closes.

¹⁸⁶ The Bureau advises applicants to retain a copy of this confirmation page.

¹⁸⁷ *See* Section I.C.2.f. "Duty to Report Prohibited Communications," above.

seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.2105(c).

M. Maintaining Current Information in Short-Form Applications

109. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence,¹⁸⁸ or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment.¹⁸⁹ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a "major amendment," as defined by section 1.2105, the major amendment will not be accepted and may result in the dismissal of the application.¹⁹⁰ As noted above, after the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to section 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction97@fcc.gov. This e-mail must include a subject or caption referring to Auction 97 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (PDF) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.2105(c).

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available August 28, 2014

110. No later than Thursday, August 28, 2014, an auction tutorial will be available on the Auction 97 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and AWS-3 service rules. The tutorial will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

111. The Bureau believes parties interested in participating in this auction will find the interactive, online tutorial an efficient and effective way to further their understanding of the auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen

¹⁸⁸ We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. *See, e.g., Vermont Telephone Company, Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 14130 (Enf. 2011).

¹⁸⁹ 47 C.F.R. §§ 1.65, 1.2105(b). *See also Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 ¶ 8.

¹⁹⁰ 47 C.F.R. § 1.2105(b)(2).

shots of the online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.¹⁹¹

112. The auction tutorial will be accessible from the Commission's Auction 97 web page at <http://wireless.fcc.gov/auctions/97/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

113. Spectrum Financial Partners asks that we clarify the online interactive auction tutorial to include a clear description of the various fields in the downloadable reports, which might not be familiar to those taking part in a Commission auction for the first time.¹⁹² Spectrum Financial Partners also urges us to do more to make the auction tutorial more broadly available, perhaps even by posting a video version of the interactive tutorial on YouTube.¹⁹³ We find the description of the various fields in the downloadable reports contained in our auction materials to be sufficiently clear, even for first-time bidders. Our "Integrated Spectrum Auction System (ISAS) Bidder's Guide" — which is sent by overnight delivery to all qualified bidders in advance of the mock auction and which is also available to the public in the FCC Auction System — provides additional information. We therefore decline to make the changes to the tutorial materials requested by Spectrum Financial Partners. In addition, because our auction tutorial is publicly-available on the Auction 97 website and is accessible 24 hours a day, 7 days a week, it is already widely accessible, and we are not persuaded that there is any need to create other formats of the tutorial.¹⁹⁴

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on September 12, 2014

114. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachments D and E to this Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System.¹⁹⁵ This short-form application must be submitted prior to 6:00 p.m. ET on September 12, 2014. **Late applications will not be accepted.** No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.¹⁹⁶

115. Applications may generally be filed at any time beginning at noon ET on August 28, 2014, until the filing window closes at 6:00 p.m. ET on September 12, 2014. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on September 12, 2014.

116. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text

¹⁹¹ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

¹⁹² See Spectrum Financial Partners Comments at 3.

¹⁹³ *Id.*

¹⁹⁴ Because certain portions of our auction tutorial are interactive, posting the auction tutorial to sites such as YouTube would make such interactive features inaccessible. In addition, our tutorial is designed to be compliant with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d, as amended by the Workforce Investment Act of 1998, P.L. 105-220). Posting the tutorial to sites such as YouTube could disable certain Section 508-compliant features.

¹⁹⁵ 47 C.F.R. § 1.2105(a).

¹⁹⁶ See Section III.D. "Upfront Payments – Due October 15, 2014," below.

telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

117. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete, (2) those that are rejected, and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

118. As described above, after the application filing deadline on September 12, 2014, applicants can make only minor corrections to their applications.¹⁹⁷ They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).¹⁹⁸

119. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.¹⁹⁹ Authorizations may be sent by e-mail to auction97@fcc.gov.

D. Upfront Payments – Due October 15, 2014

120. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. **All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on October 15, 2014.**

1. Making Upfront Payments by Wire Transfer

121. Wire transfer payments must be received before 6:00 p.m. ET on October 15, 2014.²⁰⁰ No other payment method is acceptable.²⁰¹ To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 081000210
Receiving Bank: U.S. Bank
1005 Convention Plaza
St. Louis, MO 63101
BENEFICIARY: FCC/Account # 152307774819
Originating Bank Information (OBI Field): (Skip one space between each information item)

¹⁹⁷ See Section II.L. "Minor Modifications to Short-Form Applications," above.

¹⁹⁸ 47 C.F.R. § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12035.

¹⁹⁹ In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.F. "Auction Registration," below.

²⁰⁰ An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri.

²⁰¹ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “U097”)

FCC CODE 1: (same as FCC Form 159, block 28A: “97”)

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO: # 979085

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction. Do not use BNF or Lockbox numbers from previous auctions.

122. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, write “Wire Transfer – Auction Payment for Auction 97.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 97 before the deadline.²⁰²

123. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.²⁰³ **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director’s Auctions Accounting Group at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

124. Please note the following information regarding upfront payments:

All payments must be made in U.S. dollars.

All payments must be made by wire transfer.

Upfront payments for Auction 97 go to a lockbox number different from the lockboxes used in previous Commission auctions.

Failure to deliver a sufficient upfront payment as instructed by the October 15, 2014, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. FCC Form 159

125. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC

²⁰² Letter to Lee G. Petro, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 10-1270, 25 FCC Rcd 9046 (Auc. Div. 2010).

²⁰³ See, e.g., Letter to David G. O’Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 08-622, 23 FCC Rcd 4765 (2008); Letter to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1944, 18 FCC Rcd 11552 (2003).

Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

3. Upfront Payments and Bidding Eligibility

126. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction.²⁰⁴ An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

127. Applicants that are former defaulters, as described above, must make upfront payments that are fifty percent greater than non-former defaulters.²⁰⁵ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules.²⁰⁶

128. An applicant must make an upfront payment sufficient to obtain bidding eligibility for the licenses on which it will bid. The Bureau proposed in the *Auction 97 Comment Public Notice* that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, i.e., the maximum number of bidding units on which a bidder may place bids.²⁰⁷ Under the Bureau’s proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. **At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 97, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which it wishes to place bids and hold provisionally winning bids in any given round.²⁰⁸ The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

129. In the *Auction 97 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to approximately one-half of the minimum opening bids.²⁰⁹ The Bureau further proposed that each license be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed for the license.²¹⁰ The number of bidding units for each license will remain constant throughout the auction. The Bureau did not receive any comments on its proposals for calculating upfront payments or assigning bidding units to each license, and thus adopts upfront payments that are approximately one-half of the minimum opening bids. We note that, because the minimum

²⁰⁴ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997); *see also Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134.

²⁰⁵ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; *see also* 47 C.F.R. § 1.2106(a); Section II.J. “Provisions Regarding Former and Current Defaulters,” above.

²⁰⁶ 47 C.F.R. § 1.2110(c).

²⁰⁷ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5227-28 ¶ 33.

²⁰⁸ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. *See* Section IV.B.4. “Provisionally Winning Bids,” below.

²⁰⁹ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5227 ¶ 32.

²¹⁰ *Id.* at 5227-28 ¶ 33. “Former Defaulters” – i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies – are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. 47 C.F.R. § 1.2106(a).

opening bids we adopt in this Public Notice differ from those proposed, the number of bidding units and the upfront payment amount associated with each license are different than those that were proposed in the *Auction 97 Comment Public Notice*. The complete list of licenses for Auction 97 and the specific number of bidding units and associated upfront payment for each license are set forth in Attachment A to this Public Notice.

130. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.²¹¹ In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. **Each applicant should check its calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

Table 2: Upfront Payments, Bidding Eligibility, and Bidding Flexibility Example

| License | Market | Description | Bidding Units | Upfront Payment |
|-------------|--------|---------------|---------------|-----------------|
| AW-CMA166-G | CMA166 | Hickory, NC | 30,000 | \$30,000 |
| AW-CMA183-G | CMA183 | Asheville, NC | 28,000 | \$28,000 |

131. If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 58,000 bidding units (30,000 + 28,000) of bidding eligibility. If a bidder only wishes to bid on one of these licenses, purchasing 30,000 bidding units would allow the bidder to bid on either license, but not both at the same time. If the bidder purchased only 28,000 bidding units, it would have enough eligibility for the Asheville license but not the Hickory license.²¹²

132. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5.²¹³ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.²¹⁴

²¹¹ A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of licenses identified on its FCC Form 175. In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (*see* 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses it selected on its FCC Form 175.

²¹² Spectrum Financial Partners supports the proposal to permit bidders to allocate upfront payments to multiple licenses of equal or lesser values, but notes that the examples provided in the *Auction 97 Comment Public Notice* are both CMA licenses. *See* Spectrum Financial Partners Comments at 2. It recommends allowing bidders to allocate their upfront payments to bids for either CMA or EA licenses, and asks for clarification that such flexibility will be permitted between CMA and EA licenses. *Id.* Spectrum Financial Partners' need not be concerned about our use of only CMA-based licenses in the above example. While our example uses only CMA-based licenses, an upfront payment will be applicable to individual licenses based solely on the bidding units it represents without regard to the geographic area type covered by the license.

²¹³ 47 C.F.R. § 1.2106(a).

²¹⁴ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175, the applicant will not be eligible to participate in the auction. This applicant will retain its status as an applicant in Auction 97 and will remain subject to 47 C.F.R. §§ 1.2105(c). *See* Star Wireless and Northeast Communications of Wisconsin, Inc., *Order on Review*, 22 FCC Rcd 8943, 8947 ¶ 8.

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

133. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public. For that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2980. Eligibility for refunds is discussed in Section V. G., below. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
ABA Number
Address of Bank
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Correspondent Bank (if applicable)
ABA Number
Account Number

F. Auction Registration

134. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

135. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID[®] tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

136. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, November 6, 2014, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

137. In the event that SecurID[®] tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

138. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID[®] token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID[®] tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID[®] tokens, the**

telephonic bidding telephone number, and the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide” are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 97.

139. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

H. Mock Auction – November 10, 2014

140. All qualified bidders will be eligible to participate in a mock auction on Monday, November 10, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

141. DISH requests that we conduct at least one, but preferably two, mock auctions at least one week before the auction begins, and that the mock auction(s) offer the same number of licenses as the auction itself to match the actual auction’s scenarios as closely as possible.²¹⁵ In keeping with our practice in most auctions, we will hold a mock auction shortly before the start of Auction 97 that will offer a sampling of licenses available in the auction. Based on our experience, this approach provides adequate practice and avoids the need to lengthen the time period between the short-form application deadline and the start of bidding.

IV. AUCTION

142. The first round of bidding for Auction 97 will begin on Thursday, November 13, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

143. In the *Auction 97 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 97 in a single auction using a standard simultaneous multiple-round (“SMR”) auction format.²¹⁶ This format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses.

144. With one exception, all commenters that discussed this issue support using a standard SMR auction format without any form of package bidding.²¹⁷ AT&T notes that this format has been used successfully for two decades and that the wireless industry is extremely familiar with it.²¹⁸ AT&T maintains that using this design for Auction 97 will promote a competitive and fair auction where both large and small bidders are familiar with the format and can make informed choices in an efficient manner.²¹⁹ Verizon Wireless supports the use of package bidding in Auction 97, and proposes allowing

²¹⁵ DISH Comments at 17.

²¹⁶ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5224 ¶ 17.

²¹⁷ AT&T Comments at 1-2; C Spire Comments at 2-3; CCA Comments at 9; US Cellular Comments at 5, 7; AT&T Reply Comments at 2; CCA Reply Comments at 5-8; C Spire Reply Comments at 2-4; New America Foundation/Public Knowledge Reply Comments at 2-3, 7-9; NTCA Reply Comments at 5-6; US Cellular Reply Comments at 2-7.

²¹⁸ See AT&T Comments at 1-2.

²¹⁹ *Id.*

applicants to bid on a nationwide package of licenses in the H, I, and J Blocks.²²⁰ Verizon Wireless maintains that package bidding will increase participation and bidding competition because it allows bidders to bid on both the value of the individual EA licenses and the value of obtaining spectrum nationwide over a consistent set of frequencies. Verizon Wireless also claims that the risk of failing to acquire all licenses in a business plan (the “exposure problem”) may inhibit participation because, for some bidders, the potential for acquisition of all desired licenses is needed to support individual license bid amounts.²²¹ However, US Cellular asserts that Verizon Wireless has previously made clear that the availability of larger license areas, such as the EA-based licenses being offered in Auction 97, would significantly mitigate the “exposure risks” it would face if it could not bid on packages of smaller license areas.²²²

145. We conclude, based on the record and in light of our experience with previous spectrum auctions, including auctions of Advanced Wireless Services (“AWS”) licenses, that a standard SMR format will provide bidders with a simple and efficient means of bidding on single or multiple licenses and will offer adequate opportunity for bidders in Auction 97 to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans.²²³ We therefore adopt a standard SMR auction format for Auction 97. Accordingly, bids will be accepted on all licenses in each round of the auction until bidding stops on every license unless otherwise announced.²²⁴

2. Single Auction with a Single Set of Procedures and Requirements for the Unpaired and Paired Bands

146. A number of commenters ask (to varying degrees) that we recognize the differences between the unpaired and paired bands when adopting procedures and requirements for Auction 97 by establishing separate bidding eligibility, activity waivers, and stopping rules for the bands.²²⁵ They submit that it is not likely that licenses in the bands could be used as close substitutes because they have different technical characteristics and likely uses, and that combined procedures could enable bidders to use bidding strategies designed to hurt smaller competitors and new entrants, which could deter competition.²²⁶ These commenters advocate establishing separate upfront payment requirements and bidding eligibility for the unpaired and paired bands to prevent a bidder from gaming eligibility and activity requirements by “parking” bidding eligibility on licenses in one band to lock competitors out of that spectrum or distract from its real interests.²²⁷ They argue that such strategic parking enables larger competitors to drive up the cost of spectrum they have no real interest in winning, and could cause smaller competitors or new entrants to drop out of the auction early, thereby potentially depressing

²²⁰ Verizon Comments at 8-10.

²²¹ *Id.*

²²² US Cellular Comments at 8-9.

²²³ Our decision not to employ package bidding for AWS-3 licenses in Auction 97 does not reflect on or preclude future use of package bidding in Commission auctions.

²²⁴ *See* Section IV.A.8, “Auction Stopping Rules,” below.

²²⁵ CCA Comments at 6-7; DISH Comments at 2-17; T-Mobile Comments at 2-4; CCA Reply Comments at 3-4; C Spire Reply Comments at 2; New America Foundation/Public Knowledge Reply Comments at 3-6. DISH notes that the Spectrum Act does not require the bands to be auctioned simultaneously, or that combined bidding and eligibility procedures be used. DISH Comments at 13. T-Mobile makes a recommendation concerning our proposed auction stopping rules, which we address separately in Section IV.A.8 “Auction Stopping Rules,” below.

²²⁶ CCA Comments at 6-7; DISH Comments at 2-3, 8; New America Foundation/Public Knowledge Reply Comments at 3-6; CCA Reply Comments at 3-4.

²²⁷ *See* CCA Comments at 6-7; DISH Comments at 10-11, 16-17.

auction revenues.²²⁸ They maintain that separate eligibility and activity requirements will avoid such results.²²⁹

147. AT&T and Verizon Wireless support a single auction with a single set of procedures.²³⁰ Verizon Wireless submits that separate auctions would significantly increase auction complexity, limit applicants' bidding flexibility, inhibit competition for the 1695-1710 MHz band, and decrease auction revenues.²³¹ AT&T argues that commenters' arguments in support of adopting separate procedures and requirements are premised on the false assumptions that the different technical characteristics of the bands warrant separate auction treatment, and that employing common auction procedures for both bands will encourage parking.²³² Both AT&T and Verizon Wireless maintain that other bidders may view the bands as substitutable or complementary and, if so, public interest objectives are best promoted by allowing the market to reflect substitutability through a single set of auction procedures.²³³ They also contend that commenters' concerns about parking are misplaced, because an applicant bidding solely on the 1695-1710 MHz band to preserve eligibility will quickly move its bids as soon as the reserve is met, and thus eligibility "parkers" will not drive up the price any higher than otherwise required to meet the reserve.²³⁴

148. Auction 97 will offer paired and unpaired licenses in a single auction subject to one set of procedures and requirements. Particularly where, as here, interested parties are divided on whether licenses being offered may be characterized as substitutes, such information may best be discovered through a competitive bidding process. Offering both the paired and unpaired bands in the same auction will allow market forces to determine the degree to which market participants view the AWS-3 spectrum blocks as substitutable. Our approach is grounded in our experience with past auctions where the degree to which licenses may be characterized as substitutable or complementary differs depending upon the perspective of each auction participant.²³⁵ Providing for two different sets of bidding eligibility, activity waivers, and stopping rules would disadvantage bidders interested in both paired and unpaired blocks by forcing them to manage two separate pools of eligibility, which would reduce their ability to pursue backup strategies as prices rise. Whether in one auction or two simultaneous auctions, requiring bidders interested in both blocks to deal with separate sets of bidding actions would invite confusion and could lead to mistakes in bidding. Elsewhere in this Public Notice, we describe procedures that are intended to ameliorate the parking concerns raised by commenters. Accordingly, we will conduct Auction 97 under a

²²⁸ See CCA Comments at 6-7; DISH Comments at 3, 8-11; New America Foundation/Public Knowledge Reply Comments at 3-6; CCA Reply Comments at 3-4.

²²⁹ See CCA Comments at 7; DISH Comments at 10-11, 16-17; New America Foundation/Public Knowledge Reply Comments at 3-6; CCA Reply Comments at 3-4.

²³⁰ AT&T Reply Comments at 2-7; Verizon Wireless Reply Comments at 5-6; AT&T July 15, 2014 *Ex Parte*.

²³¹ Verizon Wireless Reply Comments at 5; Verizon Wireless July 16, 2014 *Ex Parte* at 2.

²³² AT&T Reply Comments at 2-3.

²³³ AT&T Reply Comments at 3-5; Verizon Wireless Reply Comments at 5. See also Letter from Stacey G. Black, Assistant Vice President, Federal Regulatory, External and Legislative Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78 (filed July 11, 2014) at 2 (the Commission should allow the both the paired and unpaired bands to be included in Auction 97 and allow bidders to determine the extent to which these bands are substitutable or complementary); Verizon Wireless July 16, 2014 *Ex Parte* at 2 (questioning the assumption by DISH that the bands are not substitutes for one another).

²³⁴ AT&T Reply Comments at 6; Verizon Wireless Reply Comments at 5-6.

²³⁵ For example, in Auction 73, the Commission offered licenses covering five blocks of 700 MHz band spectrum, including both paired and unpaired licenses having differing geographic area sizes, service rules, and technical requirements. See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments and Other Procedures for Auction 73, *Public Notice*, 22 FCC Rcd 18141 (2007) ("*Auction 73 Procedures Public Notice*").

single set of procedures and requirements covering both the unpaired and paired bands.

3. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

149. Consistent with its practice in several prior wireless spectrum auctions, the Bureau proposed in the *Auction 97 Comment Public Notice* to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.²³⁶ The Bureau sought comment on the proposal to implement limited information disclosure procedures and on any alternatives for Auction 97.²³⁷

150. We received several comments on our proposal to employ limited information disclosure procedures for Auction 97, both in support²³⁸ and in opposition.²³⁹ The limited information disclosure procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion,²⁴⁰ and after carefully considering the record on this issue, we find nothing that persuades us that we should depart from our now-established practice of implementing these procedures in wireless spectrum auctions.²⁴¹ We disagree with the assertions of commenters that argue that limited information disclosure procedures are unnecessary or harmful to smaller bidders,²⁴² and conclude that the competitive benefits associated with limiting information disclosure support adoption of such procedures and outweigh the potential benefits of full disclosure.²⁴³ Accordingly, we adopt the limited information disclosure procedures proposed in the *Auction 97 Comment Public Notice*.²⁴⁴ Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the

²³⁶ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5224 ¶¶ 18-22.

²³⁷ *Id.* at 5225 ¶ 23.

²³⁸ See AT&T Comments at 1-2; C Spire Comments at 2-3; DISH Comments at 14-16; New America Foundation/Public Knowledge Reply Comments at 2, 6-7; AT&T Reply Comments at 2; C Spire Reply Comments at 4-5; Verizon Wireless Reply Comments at 3-5; Verizon Wireless July 16, 2014 *Ex Parte* at 1.

²³⁹ See CCA Comments at 7-9; US Cellular Comments at 9-16; CCA Reply Comments at 4-5; US Cellular Reply Comments at 7-8.

²⁴⁰ See Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78, *Public Notice*, DA 08-1090, 23 FCC Rcd 7496, 7536 ¶ 157 (WTB 2008) (recognizing that limited information procedures may have overall competitive benefits from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding); Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92, *Public Notice*, DA 11-420, 26 FCC Rcd 3342, 3372 ¶ 128 (WTB 2011) (finding that the competitive benefits associated with limited information disclosure procedures support adoption of such procedures).

²⁴¹ We also decline to adopt US Cellular's suggestion that we use a pre-defined eligibility ratio to determine the level of competition for Auction 97 and make our decision about whether to limit the information available to bidders contingent upon competitiveness of the auction (see US Cellular Comments at 15).

²⁴² See CCA Comments at 7-9; US Cellular Comments at 9-13.

²⁴³ See "Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78," *Public Notice*, DA 08-1090, 23 FCC Rcd 7496, 7536 ¶ 157 (WTB 2008), in which the Bureau recognized that limited information procedures may have overall competitive benefits from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding.

²⁴⁴ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5224 ¶¶ 18-22.

bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license and the amounts of those bids. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage — the percentages of licenses (as measured in bidding units) on which there were new bids — for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

151. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 97, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

152. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of, or compliance with, the Commission’s prohibition of certain communications. As described in more detail above, section 1.2105(c)(1) of the Commission’s rules provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.²⁴⁵

153. In Auction 97, the Commission will not disclose information regarding license selection or the amounts of bidders’ upfront payments and bidding eligibility. The Commission will disclose the other portions of applicants’ short-form applications through its online database, and certain application-based information through public notices.

154. To assist applicants in identifying other parties subject to section 1.2105(c), the Bureau will notify separately each applicant in Auction 97 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 97, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 97, it will send to each applicant in Auction 97 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with section 1.2105(c) — such as the identities of other applicants’ controlling interests and entities with a greater than ten percent ownership interest — will be available through the publicly-accessible online short-form application database.²⁴⁶

155. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission’s prohibition of certain communications, pursuant to section 1.2105(c), particularly in light of the Commission’s procedures regarding the availability of certain information in Auction 97. While applicants’ license selections will not be disclosed until after Auction

²⁴⁵ 47 C.F.R. § 1.2105(c)(1). See Section I.C.2. “Prohibited Communications and Compliance with Antitrust Laws,” above.

²⁴⁶ For purposes of section 1.2105(c), the term “applicant” includes all controlling interests, all parties with ownership interests greater than ten percent and all officers and directors of the applicant. 47 C.F.R. § 1.2105(c)(7).

97 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

156. If an applicant is found to have violated the Commission's rules or the antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.²⁴⁷

157. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's limited information disclosure procedures and section 1.2105(c).²⁴⁸ **To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.**

4. Eligibility and Activity Rules

158. As discussed above, the Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 97.²⁴⁹ The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units as listed in Attachment A to this Public Notice. Bidding units assigned to each license do not change as prices change during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

159. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new bids in the round and its provisionally winning bids from the previous round. If a bidder removes bids in the current round or withdraws provisionally winning bids, those bids no longer count towards the bidder's activity.²⁵⁰

160. The minimum required activity is expressed as a percentage of the bidder's current

²⁴⁷ 47 C.F.R. § 1.2109(d).

²⁴⁸ The Bureau has previously warned Auction 73 applicants that such disclosures could violate the Commission's rules. See Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information, *Public Notice*, DA 08-13, 23 FCC Rcd 18 (2008).

²⁴⁹ See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

²⁵⁰ See Section IV.B.6. "Bid Removal and Bid Withdrawal," below.

eligibility, and increases by stage as the auction progresses. Because these procedures (as set forth under “Auction Stages” in Section IV.A.5. and “Stage Transitions” in Section IV.A.6. below) have proven successful in maintaining the pace of previous auctions, the Bureau adopts them for Auction 97. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction.²⁵¹

5. Auction Stages

161. In the *Auction 97 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.²⁵² Under the Bureau’s proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. US Cellular supports our proposal to divide the auction into two stages, and opposes adopting a third stage with a 98 percent activity requirement.²⁵³ Aloha Partners asks the Bureau to add a third stage with a 100 percent activity requirement and would require that minimum acceptable bids be 20 percent higher than provisionally winning bids, and recommends that this third stage be implemented when the number of new provisionally winning bids falls below ten bids.²⁵⁴

162. We see no need to establish, at this time, a third stage with a 100 percent eligibility requirement as requested by Aloha Partners. Based on our past experience, we believe that two stages with 80 percent and 95 percent activity requirements should facilitate the auction progressing at a reasonable pace. In some of our earlier auctions, we established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter.²⁵⁵ Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders slightly more flexibility than a higher requirement would in fulfilling their activity requirements during the final stage of the auction. Accordingly, we decline to establish a third stage with a 100 percent activity threshold at this time.²⁵⁶ The Bureau notes that it has the discretion to further alter the activity requirements (by, for example, establishing a 98 or 100 percent threshold) before and/or during the auction as circumstances warrant. We also have other mechanisms by which to influence the speed of the auction if we determine that such steps are necessary. Therefore, we adopt the two stages as described in more detail immediately below.

163. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the

²⁵¹ See Section IV.A.7. “Activity Rule Waivers,” below.

²⁵² *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5228-29 ¶¶ 34-36.

²⁵³ See US Cellular Comments at 16-17; US Cellular Reply Comments 9-10.

²⁵⁴ See Aloha Partners Comments at 2.

²⁵⁵ For example, in Auction 35, Stage One (80 percent activity requirement) lasted 37 rounds, Stage Two (90 percent activity requirement) lasted 5 rounds, and Stage Three (98 percent activity requirement) lasted 59 rounds.

²⁵⁶ We have previously declined similar requests to add a third stage and/or to adopt a greater activity requirement for the final stage of the auction for similar reasons. See Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58, *Public Notice*, 19 FCC Rcd 18190, 18216-17 (WTB 2004). In Auction 73 we also declined to establish a third stage prior to the auction. See *Auction 73 Procedures Public Notice*, 22 FCC Rcd 18141, 18187-88 ¶ 168. However, in Auction 73 we exercised our discretion to implement a third stage — in this case, with a 98 percent activity requirement — by announcement during the auction.

bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

164. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System

165. When the Bureau moves the auction from Stage One to Stage Two, we will first alert bidders by announcement in the bidding system. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

6. Stage Transitions

166. In the *Auction 97 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.²⁵⁷ The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent.²⁵⁸ The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

167. We adopt our proposal for stage transitions. Thus, the auction will start in Stage One.²⁵⁹ The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in

²⁵⁷ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5228-29 ¶¶ 36-37.

²⁵⁸ If the Bureau implements stages with activity requirements other than the ones listed above, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by the reciprocal of the activity requirement. For example, with a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; with a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

²⁵⁹ The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. See Section IV.A.8. "Auction Stopping Rules," below.

bidding units) on which there are new bids.²⁶⁰

7. Activity Rule Waivers

168. The Bureau proposed in the *Auction 97 Comment Public Notice* that each bidder in the auction be provided with three activity rule waivers.²⁶¹ The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

169. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

170. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

171. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. **Applying a waiver is irreversible: once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

8. Auction Stopping Rules

172. In the *Auction 97 Comment Public Notice*, the Bureau proposed to employ a simultaneous stopping rule under its SMR proposal.²⁶² Under this rule, all licenses remain available for bidding until bidding stops simultaneously on every license.²⁶³ More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, under our SMR proposal, unless we announce

²⁶⁰ For example, when monitoring activity to determine when to change stages, the Bureau may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally — but not always — changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

²⁶¹ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5230 ¶ 42.

²⁶² *Id.* at 5226-27 ¶¶ 28-30.

²⁶³ *Id.* at 5226 ¶ 28.

alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license.

173. We also proposed that the Bureau retain discretion to exercise any of the following alternative versions of the simultaneous stopping rule for Auction 97:²⁶⁴

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license that is not FCC-held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an “FCC-held” license) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines (Option 1) and (Option 2) above.

Option 4. The auction would end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

174. We proposed to exercise these alternative versions of the simultaneous stopping rule only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely (e.g., before bidder have had an adequate opportunity to satisfy any applicable reserve prices).²⁶⁵ We noted that before exercising these options, we are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids.²⁶⁶ We also proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.²⁶⁷

175. As part of their general request that we adopt separate procedures and requirements for the paired and unpaired bands, several parties ask us to apply our stopping rules separately to the paired and unpaired bands.²⁶⁸ T-Mobile suggests we apply the stopping rules based on activity within a particular band rather than the activity across all licenses.²⁶⁹ Under T-Mobile’s proposal, if bidding stops on one of the bands, the auction for that band would close.²⁷⁰ T-Mobile submits that this will add

²⁶⁴ *Id.* at 5226 ¶ 29.

²⁶⁵ *Id.* at 5226-27 ¶ 30.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ See CCA Comments at 6-7; DISH Comments at 2, 8, 14, 16-17; New America Foundation/Public Knowledge Reply Comments at 3-5; T-Mobile Comments at 3-4. See also C Spire Reply Comments at 2.

²⁶⁹ See T-Mobile Comments at 3.

²⁷⁰ *Id.*

certainty to the auction process and avoid delaying the close of the auction any longer than necessary, and claims that leaving the entire auction open even when interest in one band diminishes may prompt insincere bidding by allowing bidders interested in one band to park bids in another merely to preserve eligibility, thereby artificially prolonging the auction.²⁷¹ DISH and New America Foundation/Public Knowledge advocate separate stopping rules for the unpaired and paired bands, arguing that combined procedures for bands that they consider to be non-substitutable could enable bidders to employ bidding strategies designed to hurt smaller competitors and new entrants, which could deter competition and suppress revenues.²⁷² Like T-Mobile, DISH and New America Foundation/Public Knowledge are concerned that applying the stopping rules based on activity across all licenses could facilitate strategic parking and permit bidders to pursue the very “wait and see” approach the eligibility and activity rules are designed to prevent.²⁷³ CCA echoes the sentiments of T-Mobile, DISH, and New America Foundation/Public Knowledge regarding parking and argues that such behavior could be prevented by adopting separate stopping rules for the bands.²⁷⁴

176. We adopt procedures to address these commenters’ concerns that bidding activity could stop on one band well before it stops on the other. We generally adopt our stopping rules as described above, but we do so on a per-band basis described as follows. After no more than five consecutive rounds in which no bids have been placed or withdrawn for licenses in one of the two bands (i.e., the unpaired 1695-1710 MHz band and the paired 1755-1780/2155-280 MHz band), no bidder has placed a proactive waiver, and the associated reserve price has been met, we will close the bidding for that band.²⁷⁵ Accordingly, bidders will no longer be able to place new bids for licenses in the band, nor will they be able to withdraw any provisional winning bids for licenses in the band.²⁷⁶ We reserve the right to close bidding for a band after fewer than five consecutive rounds without bidding activity. We will notify bidders with an announcement in the FCC Auction System before bidding closes for one of the bands.

177. Aloha Partners agrees that there should be a mechanism to end the auction when the number of bids decreases to low levels, but expresses concern that the proposed special stopping rule could be misused by a bidder that has remaining eligibility in the last round by bidding on licenses that it may not have shown an interest in previously.²⁷⁷ As an alternative, Aloha Partners recommends the Bureau instead add a third stage, to be implemented when the number of new winning bids falls below ten bids, that would require a bidder to have activity covering 100 percent of its eligibility and would require minimum acceptable bids be 20 percent higher than provisionally winning bids.²⁷⁸ As discussed in Section IV.A.5. above, we decline to adopt Aloha Partners’ request for a third stage with a 100 percent eligibility requirement in lieu of our special stopping rule.

178. Aside from the per-band departure from our past procedure discussed above, the Bureau

²⁷¹ *Id.* at 3-4.

²⁷² *See* DISH Comments at 2-3; New America Foundation/Public Knowledge Reply Comments at 3-5.

²⁷³ *See* DISH Comments at 8-12; New America Foundation/Public Knowledge Reply Comments at 3-5.

²⁷⁴ *See* CCA Comments at 7.

²⁷⁵ Even if we declare bidding on one of the bands closed, section 1.2105(c)’s prohibition on certain communications will continue to apply to every Auction 97 applicant until the down payment deadline that is to be announced by public notice following the close of the auction. *See* Section I.C.2., “Prohibited Communications and Compliance with Antitrust Laws,” above.

²⁷⁶ Our decision to end the auction for a given band in this manner for Auction 97 does not pre-judge how we may approach stopping rules in any future auctions, including those in which the same or similar facts and circumstances exist.

²⁷⁷ *See* Aloha Partners Comments at 1.

²⁷⁸ *Id.* at 2.

retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. We will not, however, employ the first alternative (Option 1) for a band if the reserve price for that band has not been met. Bidders will continue to have the opportunity to place bids in a given band at least until the reserve price for that band is met.

9. Auction Delay, Suspension, or Cancellation

179. In the *Auction 97 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²⁷⁹ We received no comment on this issue.

180. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, we may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that we will exercise of this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

181. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately ten days before the start of the auction. Each bidding round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

182. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. We may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

2. Reserve Price and Minimum Opening Bids

183. Section 309(j) of the Communications Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for Commission licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.²⁸⁰ Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²⁸¹ Among other factors, we must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being

²⁷⁹ See *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 5227 ¶ 31.

²⁸⁰ 47 U.S.C. § 309(j)(4)(F).

²⁸¹ *Part 1 Third Report and Order*, FCC 97-413, 13 FCC Rcd at 455-56 ¶ 141.

auctioned.²⁸² The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²⁸³

a. Reserve Price

184. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource.²⁸⁴ As discussed above, certain of the frequencies in the AWS-3 bands are “eligible frequencies” under the CSEA, and the CSEA requires that auction proceeds fund the estimated relocation or sharing costs of incumbent federal entities operating on these frequencies.²⁸⁵ In view of this, we establish reserve prices for the AWS-3 licenses offered in Auction 97.

185. The CSEA requires that the total cash proceeds attributable to “eligible frequencies” be at least 110 percent of the total estimated relocation or sharing costs provided to the Commission pursuant to the CSEA before the Commission may conclude an auction involving such frequencies.²⁸⁶ If this condition is not met, the CSEA requires the Commission to cancel the auction.²⁸⁷ For purposes of determining whether the CSEA’s revenue requirement has been met, the Commission has determined that “total cash proceeds” means winning bids net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit).²⁸⁸

186. Pursuant to the CSEA, on May 13, 2014, the NTIA notified the Commission that the total estimated relocation or sharing costs for the 1695-1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755-1780 MHz band equal \$4,575,603,000.²⁸⁹ Accordingly, in the *Auction 97 Comment Public Notice*, we proposed to establish one aggregate reserve price for the 1695-1710 MHz band and a separate aggregate reserve price for the paired 1755-1780/2155-2180 MHz band.²⁹⁰

187. We proposed to establish an aggregate reserve price of \$579,775,900 for the licenses in the 1695-1710 MHz band.²⁹¹ This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$527,069,000 provided by the NTIA for this band and, therefore, the minimum reserve price required by the CSEA. Given that the 1695-1710 MHz band consists entirely of “eligible frequencies,” we propose that the winning bid for each license in this band (i.e., the licenses in Blocks A1 and B1), net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ 47 U.S.C. § 309(j)(3)(C).

²⁸⁵ See 47 U.S.C. §§ 309(j)(8)(D), 923(g); see also Section I.C.4 (Commercial Spectrum Enhancement Act/Spectrum Act Requirements) above.

²⁸⁶ See 47 U.S.C. § 309(j)(16)(B).

²⁸⁷ *Id.*

²⁸⁸ See *CSEA/Part 1 Declaratory Ruling*, 20 FCC Rcd at 11270-72, ¶¶ 5-12.

²⁸⁹ See *NTIA May 13 Notification Letter* at Attachments B1 and B2, available at <http://www.ntia.doc.gov/category/aws-3-transition>. These figures are the current total estimated relocation or sharing costs contained in the Federal agencies’ approved transition plans. We note that Federal agencies are required to periodically update their transition plans as such plans are implemented to reflect any changed circumstances, including changes in estimated relocation or sharing costs or the timeline for relocation or sharing. See 47 U.S.C. § 923(h)(6).

²⁹⁰ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5231-32 ¶¶ 48, 50.

²⁹¹ *Id.* at 5231 ¶ 49.

lands bidding credit), will be counted toward meeting the reserve price for the band. Thus, the aggregate reserve price will be met if the total winning bids for the licenses in Blocks A1 and B1, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$579,775,900.²⁹²

188. As discussed in Section I.B. above, the 1755-1780 MHz band will be licensed paired with the 2155-2180 MHz band.²⁹³ The lower half of the frequencies in each paired license, i.e., those in the 1755-1780 MHz band, are “eligible frequencies” and are thus subject to CSEA requirements.²⁹⁴ To meet CSEA’s requirements, we proposed to establish an aggregate reserve price of \$5,033,163,300 for the 1755-1780 MHz frequencies.²⁹⁵ This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$4,575,603,000 for the 1755-1780 MHz band provided by the NTIA and, therefore, the minimum reserve price required by CSEA. Because these frequencies are one half of the frequencies authorized for use by each of the 1755-1780/2155-2180 MHz paired licenses, we propose that one-half of each winning bid for each of the paired 1755-1780/2155-2180 MHz licenses (i.e., the licenses in Blocks G, H, I, and J), net of any applicable bidding credit discounts at the end of bidding, will be counted toward meeting the reserve price. The aggregate reserve price will be met if one half of the total winning bids for the licenses in Blocks G, H, I, and J, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$5,033,163,300.²⁹⁶ Therefore, the winning “net” bids for the paired 1755-1780/2155-2180 MHz licenses must be at least twice that amount, or \$10,066,326,600, in order for the Commission to conclude the auction.

189. C Spire supports our proposal to use an aggregate reserve for the AWS-3 spectrum bands.²⁹⁷ A few commenters ask us to treat the unpaired and paired bands differently with respect to meeting the reserve prices.²⁹⁸ T-Mobile argues that there is no reason that the entire auction should be declared invalid if the reserve price is not met for one band and that, consistent with CSEA, only the auction for the particular band that failed to meet the reserve should be cancelled.²⁹⁹

²⁹² Our proposed aggregate reserve price for licenses in the 1695-1710 MHz band is calculated based on the current total estimated relocation or sharing costs contained in the Federal agencies’ approved transition plans. To the extent that total estimated relocation or sharing costs change as the result of any transition plan updates, the aggregate reserve price for Auction 97 will be adjusted accordingly to ensure that it represents 110 percent of the total estimated relocation or sharing costs consistent with the CSEA’s requirement. However, we will apply the same formula for determining whether the reserve has been met regardless of any adjustment to the aggregate reserve price.

²⁹³ See Section I.B. (Description of Licenses to be Offered in Auction 97) above.

²⁹⁴ See Sections I.A. (Introduction) and Section I.C.4. (Commercial Spectrum Enhancement Act/Spectrum Act Requirements) above.

²⁹⁵ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5231-32 ¶ 50.

²⁹⁶ Our proposed aggregate reserve price for the paired 1755-1780/2155-2180 MHz licenses is calculated based on the current total estimated relocation or sharing costs contained in the Federal agencies’ approved transition plans for the 1755-1780 MHz band. To the extent that total estimated relocation or sharing costs for this band change as the result of any transition plan updates, the aggregate reserve price for Auction 97 will be adjusted accordingly to ensure that it represents 110 percent of the total estimated relocation or sharing costs for the 1755-1780 MHz band consistent with the CSEA’s requirement. However, we will apply the same formula for determining whether the reserve has been met regardless of any adjustment to the aggregate reserve price.

²⁹⁷ C Spire Comments at 3-4.

²⁹⁸ T-Mobile Comments at 4; AT&T Reply Comments at 5; New America Foundation/Public Knowledge Reply Comments at 5; Verizon Wireless Reply Comments at 6.

²⁹⁹ T-Mobile Comments at 4. T-Mobile maintains that CSEA’s directive to cancel the auction must be read to mean the auction for the particular spectrum, not the entire auction that includes such spectrum. *Id.* at 5.

190. We adopt our proposed reserve prices for Auction 97 and our proposals for implementing them.³⁰⁰ Consistent with our past treatment of spectrum bands that are subject to separate reserve prices,³⁰¹ and based on our reading of CSEA, we will treat the unpaired and paired bands separately with respect to meeting their respective reserve prices. Thus, if the reserve price is met or exceeded for a given band, the auction for that band will be deemed to be successful and licenses in that band will be assigned. If the reserve price for the other band is not met, the auction for that band will, as required by CSEA, be cancelled as to only that band.

191. In light of our proposal to adopt procedures for limited information disclosure for Auction 97,³⁰² if information regarding net bid amounts is not provided during the auction, we proposed in the *Auction 97 Comment Public Notice* to issue an announcement in the FCC Auction System, viewable by bidders and the general public, stating that a reserve price has been met immediately following the first round in which that occurs.³⁰³ We received no comment this proposal, and therefore adopt it for Auction 97. As we noted in the *Auction 97 Comment Public Notice*, due to factors such as bid withdrawals and the effect of bidding credits, an announcement that the reserve price has been met following a round of the auction does not guarantee that the reserve price will continue to be met.³⁰⁴ Accordingly, we will make a further announcement in the FCC Auction System after any round in which the reserve price status changes.

192. As discussed above, when determining whether a reserve price has been met, the Bureau will use net bid amounts that take into account bidding credits. We will not count any withdrawn bids toward meeting a reserve price. Thus, we will count only the current provisionally winning bid on a license when determining whether a reserve price has been met.

b. Minimum Opening Bids

193. In addition to proposing aggregate reserve prices, the Bureau proposed in the *Auction 97 Comment Public Notice* to establish minimum opening bid amounts for each license in Auction 97.³⁰⁵ The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.³⁰⁶

194. In the *Auction 97 Comment Public Notice*, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area

³⁰⁰ C Spire asks in its comments that if the Commission chooses to adopt individual license reserve prices – rather than the proposed aggregate reserve – it set minimum opening bids equal to its pre-determined reserve price for each license. C Spire Comments at 3-4. As discussed below, we adopt our proposal to use an aggregate reserve for the AWS-3 spectrum bands.

³⁰¹ See *Auction 73 Procedures Public Notice*, 22 FCC Rcd at 18145 ¶ 6.

³⁰² See Section IV.A.3., “Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction,” above.

³⁰³ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5232 ¶ 52.

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 5232-33 ¶¶ 53-55.

³⁰⁶ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, DA 98-1010, 13 FCC Rcd 16445 (1998).

population,³⁰⁷ similar to our approach in many previous spectrum auctions.³⁰⁸ We proposed to use a calculation based on \$0.15 per megahertz of bandwidth per population (per “MHz-pop”) for paired licenses and \$0.05 per MHz-pop for unpaired licenses.³⁰⁹ Additionally, we proposed, as we did for Auction 96,³¹⁰ to adjust minimum opening bid amounts based on past auction results, in order to reflect historical price differences among different geographic areas.³¹¹ We further proposed a minimum of \$2,500 per license.³¹² For the license covering the Gulf of Mexico, we proposed to set the minimum opening bid at \$2,000 per megahertz.³¹³

195. Commenters presented a number of perspectives on our proposal. Verizon Wireless, CCA, C Spire, and NTCA advocate using \$0.05 per MHz-pop to set the minimum opening bids.³¹⁴ Verizon Wireless also objects to our proposal to vary the calculation of minimum opening bid amounts across license areas.³¹⁵ Spectrum Financial Partners recommends a change to our proposed method for reflecting historical price differences by excluding the results of Auction 96.³¹⁶ AT&T acknowledges the merits of our proposal to vary the calculation of minimum opening bid amounts across license areas, but suggests an alternative method. AT&T recognizes the value of adjusting minimum opening bids to account for regional price differences, but contends that making these adjustments on a license-by-license basis perpetuates anomalous bidding patterns from past auctions (which may have involved eligibility parking and inefficient pricing) into Auction 97.³¹⁷ For these reasons, AT&T offers refinements that it believes would help prevent both inefficient allocation of bidding units and eligibility parking during the auction.³¹⁸ AT&T proposes that we rank the licenses by population; group them into deciles; sum our proposed minimum opening bid amounts for the licenses in the decile; and then, based on population, redistribute that subtotal among the licenses in the decile.³¹⁹ After careful consideration of the record, the Bureau finds AT&T’s arguments compelling and adopts AT&T’s proposal in a modified form.

³⁰⁷ All population figures are from the 2010 U.S. Census, U.S. Department of Commerce, Bureau of the Census. *See* Census 2010 Summary File 1 (SF1) and Island Areas: 2010 Census Summary File (covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa).

³⁰⁸ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5232 ¶ 54.

³⁰⁹ *Id.*

³¹⁰ *See* Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures For Auction 96, AU Docket No. 13-178, *Public Notice*, DA 13-1540, 28 FCC Rcd 10013, 10026-7 ¶¶ 54-59 (2013).

³¹¹ We proposed to adjust the minimum opening bid amounts based on an index of relative winning bid amounts for licenses in each CMA and EA subject to a minimum of \$0.01 per MHz-pop. We proposed to calculate the index of the relative price differences using the winning bid amounts for the CMA and EA licenses in Auctions 66, 73, and 96. *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5232-33 ¶ 54.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ Verizon Wireless Comments at 6; CCA Reply Comments at 8; C Spire Reply Comments at 5; NTCA Reply Comments at 5.

³¹⁵ Verizon Wireless Comments at 7. Verizon Wireless maintains that their approach will ensure that markets are appropriately priced based on their size without prejudicing particular markets or encouraging auction gamesmanship. *Id.*

³¹⁶ Spectrum Financial Partners Comments at 3. Spectrum Financial Partners states that Auction 96 was an unusual case given that a single bidder obtained all licenses at exactly the reserve price it had earlier recommended. *Id.*

³¹⁷ AT&T Reply Comments at 8.

³¹⁸ AT&T Reply Comments at 8-12.

³¹⁹ *Id.* *See also* AT&T July 15, 2014 *Ex Parte*.

196. We will calculate minimum opening bid amounts as follows. We continue to use underlying prices of \$0.15 per MHz-pop for paired licenses and \$0.05 per MHz-pop for unpaired licenses, and we continue to adjust amounts based on relative price information from previous auctions. We change our method of incorporating past price information, however, in several ways. We no longer use the relative price information from Auction 96 in our calculations for the EA licenses. We revise our method of incorporating past price information by using a variation of the decile-based approach suggested by AT&T. Rather than grouping by population decile, we group the licenses by historical MHz-pop *price* deciles.³²⁰ For each decile we use the *lowest* index price value and apply it to all of the markets in that decile. As proposed in the *Auction 97 Comment Public Notice*, we round the results using our standard rounding procedures.³²¹ Finally, we adopt a minimum of \$1,000 per license, and we adopt our proposal to set the minimum opening bids for licenses covering the Gulf of Mexico at \$2,000 per megahertz.

197. We find that this approach accommodates several of the concerns raised in the record. The use of deciles smooths the opening bid amounts in a way that reduces the impact of price variation from previous auctions. Basing the deciles on a price index (rather than a population index), however, ensures that we do not exclude significant past price differences between similarly-sized markets in our calculations. The use of the lowest unit price for each decile, rather than the average price, ensures that minimum opening bids for licenses within a decile are not averaged up to the arithmetic mean price of the decile. As a result of these changes, the minimum opening bids we adopt are over 25 percent less than the ones proposed in the *Auction 97 Comment Public Notice*. We do not believe that we risk overpricing licenses by basing the minimum opening bid amounts on \$0.15 and \$0.05 per MHz-pop, especially given the substantial reserve prices adopted for this auction. These minimum opening bid amounts should, as intended, help to accelerate the competitive bidding process. The minimum opening bid amount for each AWS-3 license available in Auction 97, calculated pursuant to the procedures described above, is set forth in Attachment A.

3. Bid Amounts

198. In the *Auction 97 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts.³²² Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. We received no comment on this proposal and therefore adopt it for Auction 97.

a. Minimum Acceptable Bids

199. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the activity-based formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been

³²⁰ The index for CMAs used the results for the CMA licenses in Auctions 66 (AWS-1) and 73 (700 MHz). For each market, the price per MHz-pop was divided into the overall price per MHz-pop for all of the CMA licenses. Similarly, the index for EAs used the results for the EA licenses in those auctions.

³²¹ The Bureau will round results above \$10,000 to the nearest \$1,000; results below \$10,000 but above \$1,000 to the nearest \$100; and results below \$1,000 to the nearest \$10.

³²² *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5233 ¶ 59. Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.³²³

200. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (“the additional percentage”) is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round.³²⁴ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.³²⁵ The formula and illustrative examples are shown in Attachment B. The Bureau proposed in the *Auction 97 Comment Public Notice* to initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.3 (30%).³²⁶ Hence, at these initial settings, the minimum acceptable bid for a license would be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity covering the license.

201. All parties that commented on our proposal to initially set the maximum acceptable bid percentage at 30 percent advocate lowering the maximum to 20 percent because they are concerned that the proposed maximum of up to 30 percent would accelerate prices too quickly, thereby discouraging bidder participation and/or causing bidders to drop out of the auction.³²⁷ We recognize commenters’ concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues. At the same time, since we are under a statutory mandate to license the spectrum being offered in Auction 97 by February 2015, it is necessary that the auction move at a reasonably fast pace. Taking commenter concerns into account, we conclude that an initial maximum acceptable bid percentage of 20 percent will allow the auction to proceed at a reasonably fast pace while at the same time providing bidders the flexibility to bid up to the full value they assign to licenses. We therefore adopt an initial maximum acceptable bid percentage of 20 percent for Auction 97. We will begin the auction with the weighting factor set at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). We reiterate that we have the discretion to modify minimum acceptable bid amounts — by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments — as we see fit during the auction.

b. Additional Bid Amounts

202. Consistent with our practice in past wireless spectrum auctions, we proposed in the *Auction 97 Comment Public Notice* to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage — more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage.³²⁸ If, for

³²³ See Section IV.B.6. “Bid Removal and Bid Withdrawal,” below.

³²⁴ Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. For Round 1 calculations, because there is no prior round (i.e., no round 0), the activity index from the prior round is set at 0.

³²⁵ The Bureau will round the result using its standard rounding procedures. See note 321 (concerning rounding), above.

³²⁶ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5234 ¶ 62.

³²⁷ US Cellular Comments at 17-18; Verizon Wireless Comments at 4-6; AT&T Reply Comments at 12; CCA Reply Comments at 8-9; C Spire Reply Comments at 5; NTCA Reply Comments at 4-5; US Cellular Reply Comments at 9; AT&T July 15, 2014 *Ex Parte*; Verizon Wireless July 16, 2014 *Ex Parte* at 2.

³²⁸ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5234 ¶ 63.

example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), rounded or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions.³²⁹ The Bureau proposed in the *Auction 97 Comment Public Notice* initially to set the bid increment percentage at five percent.³³⁰ We received no comment on this proposal and therefore adopt it for Auction 97.

203. The Bureau also proposed in the *Auction 97 Comment Public Notice* to begin the auction with nine acceptable bid amounts per license (the minimum acceptable bid amount and eight additional bid amounts).³³¹ We received no comment on this proposal. We therefore adopt nine acceptable bid amounts per license, which is consistent with our past practice for most spectrum auctions.³³²

c. Bid Amount Changes

204. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, if the Bureau set a \$10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids, and the activity-based formula calculates a minimum acceptable bid amount that is \$20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$10 million above the provisionally winning bid. The Bureau sought comment in the *Auction 97 Comment Public Notice* on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters — such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts.³³³

205. We received no comment on this proposal. Therefore, we will start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. We retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if we determine that circumstances so dictate. Further, we retain the discretion to do so on a license-by-license basis. If we exercise this discretion, we will alert bidders by announcement in the FCC Auction System during the auction.

4. Provisionally Winning Bids

206. At the end of each bidding round, a “provisionally winning bid” will be determined based on highest bid amount received for each license.³³⁴ A provisionally winning bid will remain

³²⁹ See note 321 (concerning rounding), above.

³³⁰ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5234 ¶ 63.

³³¹ *Id.* at 5234 ¶ 64.

³³² In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

³³³ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5235 ¶ 66.

³³⁴ Bidding credits are not taken into consideration when determining provisionally winning bids.

the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.³³⁵

207. In the *Auction 97 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids).³³⁶ Under this approach, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. We received no comment on our tied bids proposal and therefore adopt it for Auction97.

5. Bidding

208. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 97. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

209. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

210. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID[®] token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

211. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts.³³⁷ For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box.³³⁸ Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows text files containing bid information to be uploaded.

212. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined as described in Section IV.B.3, above.

213. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

³³⁵ Section IV.A.4. "Eligibility and Activity Rules," above.

³³⁶ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5235 ¶ 68.

³³⁷ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

³³⁸ See Section IV.B.3. "Bid Amounts," above.

214. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

6. Bid Removal and Bid Withdrawal

215. In the *Auction 97 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures.³³⁹ The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawing provisionally winning bids in no more than two rounds during the auction. The rounds in which a bidder withdraws provisionally winning bids — if it chooses to do so — are at each bidder’s discretion.

216. The Bureau received no comment on its proposals. The proposed procedures will provide each bidder with appropriate flexibility during the auction; therefore, the Bureau adopts these proposals for Auction 97.

a. Bid Removal

217. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “undo” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round; but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

b. Bid Withdrawal

218. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds using the “withdraw bids” function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in section 1.2104(g).³⁴⁰ Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

219. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.³⁴¹ The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

c. Calculation of Bid Withdrawal Payment

220. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction.³⁴² If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s).³⁴³ If there are

³³⁹ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5235-36 ¶¶ 70-73.

³⁴⁰ 47 C.F.R. § 1.2104(g).

³⁴¹ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

³⁴² 47 C.F.R. §§ 1.2104(g), 1.2109.

³⁴³ The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).³⁴⁴

221. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.³⁴⁵ In the *Auction 97 Comment Public Notice*, the Bureau proposed to establish an interim withdrawal payment of ten percent of the withdrawn bid for Auction 97.³⁴⁶

222. We received no comment on this proposal and therefore adopt it for Auction 97. The Commission will assess an interim withdrawal payment equal to ten percent of the amount of the withdrawn bids. The ten percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.³⁴⁷

7. Round Results

223. Limited information about the results of a round will be made public after the conclusion of the round.³⁴⁸ Specifically, after a round closes, the Bureau will make available for each license its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC-held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

224. DISH proposes several refinements to our standard round result information and procedures. Specifically, DISH recommends that we (1) publish auction system specifications at least four weeks before the start of Auction 97 and consider releasing sample data files; (2) provide an auction application programming interface (“API”) for several different types of auction statistics and bid actions; (3) provide, after the close of each round, the total current bidder eligibility by bidding unit, the number of bidders that have reduced eligibility, and information about the total number of waivers used in the prior round.³⁴⁹ Spectrum Financial Partners requests that, in addition to making round result reports available in TXT and XML formats in the FCC Auction System, we also make them available on an FTP

³⁴⁴ See following paragraphs for discussion of interim bid withdrawal payments.

³⁴⁵ 47 C.F.R. § 1.2104(g)(1); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

³⁴⁶ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5236-37 ¶ 75.

³⁴⁷ 47 C.F.R. § 1.2104(g).

³⁴⁸ The identities of parties that are qualified to bid in Auction 97 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

³⁴⁹ DISH Comments at 18-19.

site (preferably in XLS or CVS format) that can be automatically polled for updates and downloaded and processed more mechanically.³⁵⁰

225. We respectfully decline to adopt any of these proposals. Any modifications to the FCC Auction System or related infrastructure must be considered in the context of priorities, resources, and time for testing prior to the auction. Additionally, some of the information requested by DISH is purposefully not provided as part of our limited information procedures.

8. Auction Announcements

226. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System. DISH asks that, in addition to posting notices to the FCC Auction System, we communicate new auction announcements in several ways, to include at least e-mails and text messages.³⁵¹ While communicating new auction announcements in this manner might be convenient for participants, we decline to do so. Using email and/or text messages would introduce risk by increasing reliance on systems outside of the Commission's control. As with DISH's suggested changes to our round results procedures, modifications to the FCC Auction System, related infrastructure, or procedures must also be considered in the context of priorities, resources, and time for testing prior to the auction. We conclude that providing auction announcements in the FCC Auction System has been an effective and efficient way to communicate necessary information to auction participants in past auctions, and that this will be the case for Auction 97 as well.

V. POST-AUCTION PROCEDURES

227. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

A. Down Payments

228. The Commission's rules provide that, unless otherwise specified by public notice, within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 97 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).³⁵² Since it is currently not known when Auction 97 will end and thus whether post-auction payments will be due in late 2014 or early 2015, several commenters request that we announce in advance of the auction that down payments will be due in early 2015 to enable potential bidders to make the necessary financial arrangements to ensure their ability to participate in Auction 97.³⁵³ We recognize that uncertainties regarding the year in which down payments will be due

³⁵⁰ Spectrum Financial Partners Comments at 2.

³⁵¹ DISH Comments at 18.

³⁵² 47 C.F.R. § 1.2107(b).

³⁵³ CCA/CTIA/NTCA June 6, 2014 Joint *Ex Parte* at 2; CCA Comments at 4; Verizon Wireless Comments at 2; AT&T Reply Comments at 15-17; CTIA Reply Comments at 2-4; NTCA Reply Comments at 3; US Cellular Reply Comments at 10; Verizon Wireless Reply Comments at 1; Letter from Stacey Black, Assistant Vice President, Federal Regulatory, External and Legislative Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78 (filed June 27, 2014); Letter from Rebecca Thompson Murphy, General Counsel, CCA, Scott Bergmann, Vice President, Regulatory Affairs, CTIA, and Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-78 (filed July 7, 2014) at 2; AT&T July 11, 2014 *Ex Parte* at 2; AT&T July 15, 2014 *Ex Parte*; Verizon Wireless July 16, 2014 *Ex Parte* at 1. *See also* CCA/CTIA/NTCA May 14, 2014 Joint *Ex Parte* at 2. CCA, CTIA, NTCA, and Verizon Wireless propose that down payments be due by the (continued....)

could affect potential applicants from a capital planning perspective, which could in turn affect participation in the auction. Accordingly, we exercise our discretion under section 1.2107(b) to set the down payment deadline for Auction 97 to be the later of January 7, 2015, or ten business days after release of the auction closing public notice.

B. Final Payments

229. The Commission's rules provide that each winning bidder must submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.³⁵⁴ The same parties that ask us to announce in advance of the auction that down payments will be due in early 2015 request that we make a similar announcement concerning the due date for final payments.³⁵⁵ Because we exercise our discretion to set the down payment deadline as described above, we set the final payment deadline to be the later of January 21, 2015 or ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

230. The Commission's rules provide that, within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 97.³⁵⁶ CCA and US Cellular request that we clarify that long-form applications will be due in 2015.³⁵⁷ Given the Spectrum Act's mandate to license the spectrum being offered in Auction 97 by February 2015, we decline to modify the timing for winning bidders to submit their long-form applications and will require these forms to be filed according to the schedule specified in the Commission's rules.³⁵⁸

231. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit.³⁵⁹ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

232. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*.³⁶⁰ Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more

(Continued from previous page) _____

later of January 15, 2015 or ten business days after the auction closes. Verizon Wireless Comments at 2; CCA/CTIA/NTCA May 14, 2014 Joint *Ex Parte* at 2.

³⁵⁴ 47 C.F.R. § 1.2109(a).

³⁵⁵ CCA/CTIA/NTCA June 6, 2014 Joint *Ex Parte* at 2; CCA Comments at 4; Verizon Wireless Comments at 2; AT&T Reply Comments at 15-17; CTIA Reply Comments at 2-4; NTCA Reply Comments at 3; US Cellular Reply Comments at 10; Verizon Wireless Reply Comments at 1; AT&T July 15, 2014 *Ex Parte*; Verizon Wireless July 16, 2014 *Ex Parte* at 1. See also CCA/CTIA/NTCA May 14, 2014 Joint *Ex Parte* at 2. CCA, CTIA, NTCA, and Verizon Wireless propose that down payments be due by the later of January 15, 2015 or ten business days after the auction closes. Verizon Wireless Comments at 2; CCA/CTIA/NTCA May 14, 2014 Joint *Ex Parte* at 2.

³⁵⁶ 47 C.F.R. § 1.2107(c).

³⁵⁷ CCA Comments at 4; CCA Reply Comments at 2-3; US Cellular Reply Comments at 10;

³⁵⁸ 47 C.F.R. § 1.2107(c).

³⁵⁹ 47 C.F.R. § 1.2112(b).

³⁶⁰ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.³⁶¹

D. Ownership Disclosure Information Report (FCC Form 602)

233. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.³⁶²

234. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

235. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

236. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in sections 1.2107 and 1.2110(f) of the Commission's rules.³⁶³ A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

237. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in section 1.2110(f)(3)(vii).³⁶⁴

238. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.³⁶⁵ Relevant documents can be viewed on the

³⁶¹ *Id.*

³⁶² 47 C.F.R. §§ 1.913, 1.919, 1.2107(f) and 1.2112.

³⁶³ 47 C.F.R. §§ 1.2107 and 1.2110(f).

³⁶⁴ *See* 47 C.F.R. §§ 1.2110(f)(3)(ii) – (vii).

³⁶⁵ *See generally*, Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, FCC 00-209, 15 FCC Rcd 11794 (2000); Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-51, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003); Third Report and Order, FCC 04-202, 19 FCC Rcd 17652 (2004). *See also* "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits," *Public Notice*, DA 01-613, 16 FCC Rcd 5355 (2001); "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a (continued....)"

Commission's web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the **Tribal Lands Credits** link.

F. Default and Disqualification

239. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in section 1.2104(g)(2).³⁶⁶ This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 97 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

240. As noted in the *Auction 97 Comment Public Notice*, the percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.³⁶⁷ As we noted in the *Auction 97 Comment Public Notice*, the Commission explained in the *CSEA/Part 1 Report and Order* that defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and that an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions.³⁶⁸ However, as we further noted, we do not believe the detrimental effects of any defaults in Auction 97 are likely to be unusually great.³⁶⁹ Balancing these considerations, we proposed to establish an additional default payment for Auction 97 of fifteen percent of the applicable bid.³⁷⁰ We received no comment on this proposal and therefore adopt it for Auction 97.

241. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.³⁷¹ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.³⁷²

G. Refund of Remaining Upfront Payment Balance

242. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not

(Continued from previous page) _____

Tribal Lands Bidding Credit and List of Tribal Lands," *Public Notice*, DA 00-2836, 15 FCC Rcd 24838 (2000); "Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions," *Public Notice*, DA 00-2219, 15 FCC Rcd 18351 (2000).

³⁶⁶ 47 C.F.R. § 1.2104(g)(2).

³⁶⁷ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

³⁶⁸ *Auction 97 Comment Public Notice*, 29 FCC Rcd at 5237 ¶ 78.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ 47 C.F.R. §§ 1.2109(b) and (c).

³⁷² 47 C.F.R. § 1.2109(d).

request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

243. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request including the following information:

Name, address, contact and phone number of Bank
 ABA Number
 Account Number to Credit
 Name of Account Holder
 FCC Registration Number (FRN)

The refund request may be submitted by fax to the Auctions Accounting Group at (202) 418-2980 or by mail to

Federal Communications Commission
 Financial Operations
 Auctions Accounting Group
 Gail Glasser
 445 12th Street, SW, Room 1-C864
 Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

VI. CONTACT INFORMATION

244. Contact Information Table:

General Auction Information

General Auction Questions
 Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
 (717) 338-2868
 Hours of service: 8:00 a.m. – 5:30 p.m. ET,
 Monday through Friday

Auction 97 Legal Information

Auction Rules, Policies, Regulations, including
 Reports of Section 1.2105(c) Violations and
 Application Major Modifications

Auctions and Spectrum Access Division

(202) 418-0660
 Valerie Barrish (Attorney)

Licensing Information

Service Rules, Policies, Regulations
 Licensing Issues, Engineering Issues
 Due Diligence, Incumbency Issues

Broadband Division

(202) 418-2487
 Genevieve Ross (Attorney)
 Janet Young (Engineer)

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or alternatively,
Theresa Meeks at (202) 418-2945, or
(202) 418-2980 (fax)

Auction Bidder Line

Will be furnished only to qualified bidders

FCC Copy Contractor

Additional Copies of Commission Documents

Best Copy and Printing, Inc.

445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpweb.com>

Press Information

Cecilia Sulhoff (202) 418-0587

FCC Forms

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

Accessible Formats

Braille, large print, electronic files, or audio
format for people with disabilities

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

Small Businesses

Additional information for small and
disadvantaged businesses

Office of Communications Business

Opportunities
(202) 418-0990
<http://www.fcc.gov/ocbo/>

FCC Internet Sites

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

ATTACHMENT A

Licenses to Be Auctioned

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B

Minimum Acceptable Bid Formula

The following formula used to calculate minimum acceptable bids is based on activity. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of the bid amount calculated using the formula below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids.

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bidders submitting bids on the license in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = additional percentage for the next round (round i+1)

N = minimum additional percentage or floor

M = maximum additional percentage or ceiling

X_{i+1} = dollar amount corresponding to the additional percentage

Y_i = provisionally winning bid amount from the current round

Examples

$$C = 0.5, N = 0.1, M = 0.2$$

Please note that these values are for illustrative purposes only and might not be the same as those used in the auction.

Round 1 (2 bidders submitting bids, provisionally winning bid = \$1,000,000)

1. Calculation of additional percentage for round 2:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } [(1 + 1) * 0.1] = 0.2 \text{ and } 0.2 \text{ (the maximum additional percentage)}$$

$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid amount for round 2 = \$1,200,000

Round 2 (3 bidders submitting bids, provisionally winning bid = \$2,000,000)

1. Calculation of additional percentage for round 3:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } [(1 + 2) * 0.1 = 0.3] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid amount for round 3 = \$2,400,000

Round 3 (1 bidder submitting bids, provisionally winning bid = \$2,400,000)

1. Calculation of additional percentage for round 4:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } [(1 + 1.5) * 0.1 = 0.25] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid amount for round 4 = \$2,880,000

ATTACHMENT C

**List of Parties That Filed Comments, Replies, and *Ex Partes* in
Response to Auction 97 (AWS-3) Comment Public Notice (AU Docket No. 14-78)****Initial comments:**

1. Aloha Partners II, L.P. (Aloha Partners)
2. AT&T Services, Inc. (AT&T)
3. Cellular South d/b/a C Spire Wireless (C Spire)
4. Competitive Carriers Association (CCA)
5. DISH Network Corporation (DISH)
6. Spectrum Financial Partners
7. T-Mobile USA, Inc. (T-Mobile)
8. United States Cellular Corporation (US Cellular)
9. Verizon Wireless
10. Wireless History Foundation

Reply comments:

1. AT&T Services, Inc. (AT&T)
2. Cellular South d/b/a C Spire Wireless (C Spire)
3. Competitive Carriers Association (CCA)
4. CTIA – The Wireless Association (CTIA)
5. NTCA – The Rural Broadband Association (NTCA)
6. The Open Technology Institute at the New American Foundation and Public Knowledge (joint reply comments) (New American Foundation/Public Knowledge)
7. United States Cellular Corporation (US Cellular)
8. Verizon Wireless

Ex Parte Filings:

1. CCA/CTIA/NTCA (dated May 14, 2014) (filed in GN Docket 13-185)
2. CCA/CTIA/NTCA/Consumer Electronic Association (CEA) (dated May 30, 2014), *Addendum* (dated May 30, 2014)
3. CCA/CTIA/NTCA (June 6, 2014)
4. DISH Network Corporation (dated June 20, 2014)
5. AT&T Services, Inc. (dated June 30, 2014), *Erratum* (dated July 11, 2014)
6. CCA/CTIA/NTCA (dated July 7, 2014)
7. DISH Network Corporation (dated July 9, 2014)
8. AT&T Services, Inc. (dated July 11, 2014)
9. AT&T Services, Inc. (dated July 15, 2014)
10. Verizon Wireless (dated July 16, 2014)

Brief comments:

1. Wendie Ward
2. Bun
3. Debbie Hopkins
4. Cristian Garate

ATTACHMENT D

Short-Form Application Filing Instructions

This attachment provides instructions on submitting a short-form application and an upfront payment to participate in Auction 97. It also includes instructions for interested parties wishing to view the short-form applications filed.

I. Application Preparation and Submission

Among other requirements, each applicant to participate in this auction must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **Short-form applications for Auction 97 must be submitted and confirmed prior to 6:00 p.m. ET on Thursday, September 12, 2014.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, should not be included in short-form applications. Applicants may request information submitted not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's Rules.³⁷³ Such requests must be included as an attachment to the applicant's FCC Form 175 and identify the specific information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.³⁷⁴

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, they must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

A. Minimum Software Requirements

The following software, at a minimum, is required to use the FCC Integrated Spectrum Auction System:

- Web Browser, either of the following is recommended:
 - Microsoft® Internet Explorer 8.0.
 - Mozilla® Firefox® 3.5.
- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

Currently, the Apple® Mac OS® is not supported.

B. Logging On

To submit a short-form application (FCC Form 175) electronically via the Internet, an applicant should start its web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System*

³⁷³ 47 C.F.R. § 0.459.

³⁷⁴ 47 C.F.R. § 0.459(a).

page, the applicant may log in to create a short-form application using its FCC Registration Number (“FRN”) and password.

C. Application Filing Instructions

The short-form application (FCC Form 175) requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.³⁷⁵ Pursuant to section 1.2105(a), the FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 175.

The screens comprising FCC Form 175 consist of five series, each requesting five separate types of information: 1) *Applicant Information*, 2) *License Selection*, 3) *Agreements*, 4) *Ownership*, and 5) *Certify and Submit*. In addition, *Summary* screens, a sixth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant’s FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants must fill out FCC Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, applicants should use the contact information provided in this Public Notice to obtain additional assistance.³⁷⁶

1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175, in which the applicant will provide basic information including:

- the applicant’s legal classification (e.g., individual, corporation, rural telephone cooperative, etc.)
- optional information regarding the applicant’s status as a minority- or woman-owned business or a rural telephone company
- the applicant’s name, which will be used as the bidder name during the auction³⁷⁷
- citizenship for individuals, or jurisdiction of formation for legal entities
- for applicants classified as legal entities (e.g., corporations and partnerships), the name of and information regarding the entity’s responsible individual³⁷⁸

³⁷⁵ See generally, 47 C.F.R. § 1.2105.

³⁷⁶ See Section VI. “Contact Information,” above.

³⁷⁷ See 47 C.F.R. § 1.2105(a)(2)(ii)(A).

- the name, address, telephone and fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175³⁷⁹
- the names of up to three persons authorized to bid for the applicant in the auction³⁸⁰
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims eligibility for certain types of bidding credits and the percentage claimed³⁸¹

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may **not** be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may **not** be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required in this auction for telephonic bidding.

2. License Selection

The *License Selection* screens make up the second series of screens in FCC Form 175. In these screens, the applicant will identify the licenses offered on which they may wish to bid during the auction. While an applicant is not obligated to bid on all licenses that it selects, it will not be able to bid on licenses that it has not selected on its FCC Form 175.³⁸² Be advised that there is no opportunity to change this list after the short-form application filing deadline.

To participate in an auction, applicants must select at least one license. Until a license is selected, the applicant cannot submit the FCC Form 175. An applicant's license selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review the license selections to make sure all licenses on which the applicant may wish to bid have been selected.

(Continued from previous page) _____

³⁷⁸ Section 1.2105(a)(2) requires that the name and title of an officer or director be reported if the applicant is a corporation. This rule requires disclosure of the name and title of a responsible person if a partner is not a natural person.

³⁷⁹ Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to auction97@fcc.gov.

³⁸⁰ See 47 C.F.R. § 1.2105(a)(2)(iii).

³⁸¹ See 47 C.F.R. §§ 1.2105(a)(2)(iv).

³⁸² 47 C.F.R. § 1.2105(a)(2)(i).

The *License Selection* screens contain a list of all available licenses in the auction. Applicants can navigate within this screen by selecting the individual page links or the “Previous” and “Next” buttons above and below the list of available licenses. In addition, pre-defined filters can be used to narrow down the list of licenses to be selected and saved. Specifically, licenses can be selected by (1) clicking the check box next to the license name, then selecting the “Save Selected Items” button; and (2) clicking the “Save All Items” button to save all available licenses; or (3) clicking the “Save All Filtered Items” button after applying a filter. Once the applicant has successfully saved a license, the word “Saved” will appear next to the license name to confirm it has been saved with the application.

Licenses can be removed by (1) clicking the check box (to uncheck) next to a previously saved license, then selecting the “Remove Selected Items” button; and (2) clicking the “Remove All Items” button to remove all previously saved licenses; or (3) clicking the “Remove All Filtered Items” button after applying a filter. Removed licenses will not have the word “Saved” next to the license name.

Applicants may view all saved licenses by either clicking the **Edit Icon** next to “View Saved Items” at the top-right corner of the list, or by clicking the “CONTINUE” button at the bottom of the page.

Once licenses have been saved, the *View/Edit License Selections* screen will be the first screen displayed when navigating to the License Selection step. This screen lists all licenses the applicant has selected and saved for the auction. To select a new license or remove a previously selected license, an applicant can click the **Edit Icon** next to “Return to License Selection” at the top-right corner of the list, which will return it to the original *Select Licenses* screen, as described above.

3. Agreements

The *Agreements* screens are the third series of screens in FCC Form 175. In these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.³⁸³

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission’s rules by responding “Yes” or “No” to a question asking whether the applicant has entered into a partnership, joint venture, consortia, or other agreement, arrangement or understanding of any kind relating to the licenses being auctioned, including any such agreement relating to the post-auction market structure.

If an applicant answers “No,” the applicant will continue to the *Ownership* series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement nor its description should indicate license selection or potentially reveal an applicant’s bidding strategy.

Applicants may provide FRNs for the other parties to the agreement, if available. While providing the FRN is optional, it helps prevent identification errors resulting from parties having similar names or a single party using multiple names.

³⁸³ 47 C.F.R. § 1.2105(a)(2)(viii).

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next screen, the *View/Edit Agreements* screen, lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party's name.
- Clicking the **Remove** icon next to information about a particular party to remove that corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When all agreements and the parties to each agreement have been identified, the applicant should click the **CONTINUE** button.

4. Ownership

The *Ownership* screens are the fourth series of screens in the FCC Form 175. In these screens, applicants will provide information regarding parties with ownership or controlling interests in the applicant that must be disclosed pursuant to Commission rules.³⁸⁴ The disclosure and description of FCC-regulated businesses that are owned by the applicant and by parties with certain ownership interests in the applicant are also required.³⁸⁵ In addition, if the applicant has claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues for entities related to the applicant through ownership or control in the *Ownership* screens.³⁸⁶

a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission will

³⁸⁴ 47 C.F.R. §§ 1.2105(a)(2)(ii)(A)-(B), 1.2110, and 1.2112.

³⁸⁵ 47 C.F.R. § 1.2112.

³⁸⁶ Applicants claiming eligibility for bidding credits based on revenues are also required to disclose in separate attachments information related to arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum. 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv). The procedure for attaching this information to the application is described below in Section I.C.8. "Attaching Additional Information," below.

automatically be entered into the applicant's short-form application, if it is in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS). Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. An applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its short-form application in this auction. Information must be corrected directly in the FCC Form 175. After the deadline for filing this FCC Form 175, submitted ownership information will be considered to be the applicant's most current information on file with the Commission for this auction.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- Sections 1.2105 and 1.2112(a) of the Commission's rules list the interest holders in the applicant that must be disclosed in FCC Form 175.³⁸⁷ **Applicants should note that holders of both direct and indirect interests must be reported.**
- Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.³⁸⁸

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder or the FCC-regulated businesses in which the applicant has an interest or parties with 10% or more ownership interest in the applicant have an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- **If an application includes one or more disclosable interest holders with indirect ownership in the applicant,³⁸⁹ the application must include an attachment describing the relationship between the indirect interest holder(s) and the applicant.** The attachment should provide an overview of the ownership chain that links the indirect owner(s) to the applicant, e.g., indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.³⁹⁰ One attachment connecting all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all the detailed information already provided in the data fields of the FCC Form 175.
- The "Percent of Interest Held in Applicant" should reflect the disclosable interest holder's aggregate ownership interest in the applicant (both direct and indirect). In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, a disclosable interest holder may have a 0% ownership

³⁸⁷ 47 C.F.R. §§ 1.2105, 1.2112(a). Section 1.2105 requires the disclosure on the short-form application of applicant ownership information as set forth in Section 1.2112.

³⁸⁸ 47 C.F.R. § 1.2112(a)(7).

³⁸⁹ 47 C.F.R. § 1.2112(a)(6).

³⁹⁰ *Id.*

interest in the applicant, e.g., directors and officers of an entity seeking revenue-based bidding credits.³⁹¹

- FCC-regulated businesses in which the applicant has a direct interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has a direct interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a disclosable interest holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held directly by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business. FCC-regulated businesses in which the applicant or disclosable interest holder has an indirect interest need not be reported in the FCC Form 175.
- To simplify filling out the FCC Form 175, applicants can click on the **Select Business(es) Already Submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another disclosable interest holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC-regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes ownership information already entered in the FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into three groups:

- Disclosable Interest Holders of this Applicant
- FCC-Regulated Businesses of this Applicant
- Affiliates of this Applicant and of the Applicant’s Controlling Interests (i.e., those entities that are not Disclosable Interest Holders)

To view the detailed information submitted regarding the applicant, a disclosable interest holder or FCC-regulated business, or an affiliate, click on the relevant party’s name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder’s information.

d. Bidding Credit Revenue Information

Applicants claiming eligibility for a bidding credit based on revenues must provide revenue information described below regarding entities related to the applicant by ownership or control. In addition, applicants are also required to provide information regarding any arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant’s spectrum, as well as the gross revenues of entities with which the applicant has an attributable material relationship as a result of such arrangements.³⁹² Information regarding arrangements for lease or resale (including wholesale

³⁹¹ See 47 C.F.R. § 1.2112(b)(1)(i).

³⁹² See 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv).

agreements), as well as related entities and revenues, must be provided in an attachment to the FCC Form 175. The procedure for attaching this information is described below in Section I.C.8, below.

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by section 1.2110(o) the applicant used for the revenue information (either audited financial statements or financial statements prepared in accordance with Generally Accepted Accounting Principles that are certified as accurate by the applicant's chief financial officer or equivalent).³⁹³

Applicants claiming eligibility for a bidding credit based on revenues are required to provide revenue information separately, and in the aggregate, for the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests. In addition, if the applicant is a consortium of small businesses, the information must be provided with respect to each member comprising the consortium.³⁹⁴

The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.³⁹⁵ An applicant can enter on the FCC Form 175 information about itself, its disclosable interest holders, and its affiliates. **In those instances where a controlling interest or an affiliate of a controlling interest is not a disclosable interest holder, information regarding those entities should be disclosed in the "Affiliates of Applicant" screens.**

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, except applicants claiming eligibility for bidding credits will also have an option to add information regarding affiliates that are not disclosable interest holders, including the affiliates' revenues.³⁹⁶

Applicants that claim eligibility based on revenues attributable to the applicant and related parties will be requested to provide revenue information for each disclosable interest holder. With respect to disclosable interest holders that are affiliates or controlling interests of the applicant, applicants will fill out two screens similar to those described above with respect to the applicant, i.e., one screen requesting the relevant information and a second screen regarding the source of the revenue information.

There may be circumstances in which the revenue information need not be provided for certain disclosable interest holders. For example, some entities that must be disclosed in the short-form application pursuant to section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.³⁹⁷ Because revenues for such disclosable interest holders are not attributable to the applicant, the applicant could indicate on the first screen requesting revenue information for that disclosable interest holder that no revenue information is required pursuant to the Commission's rules. To report that no revenue information needs to be disclosed, check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest within the meaning of the Commission's rules. **If the disclosable interest holder is an individual or entity that is required to disclose revenue information, you should not check this box even if gross revenues are zero for the relevant time period.**

³⁹³ 47 C.F.R. § 1.2110(o).

³⁹⁴ 47 C.F.R. § 1.2112(b)(1)(iii).

³⁹⁵ 47 C.F.R. § 1.2110(c)(5).

³⁹⁶ 47 C.F.R. § 1.2112(b)(1)(iii).

³⁹⁷ Compare 47 C.F.R. § 1.2110(c)(2) (definition of controlling interests) and (c)(5)(definition of affiliate) with 47 C.F.R. § 1.2112(a) (describing disclosable interest holders).

Eligible Rural Telephone Cooperatives Claiming Certain Gross Revenues to Be Exempt from Attribution.

An applicant will be exempt from attribution of gross revenues of an affiliate or a controlling interest in the applicant if such entity meets all of the conditions set forth in section 1.2110(b)(3)(iii) of the Commission's rules.³⁹⁸ **If an applicant claims that it (or its controlling interest) is an eligible rural telephone cooperative pursuant to section 1.2110(b)(3)(iii), it should not check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest.** The applicant should instead indicate that the affiliate or controlling interest has zero gross revenues. It must also provide, in an attachment to the FCC Form 175, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.³⁹⁹

In addition, an applicant may have affiliates that are not disclosable interest holders. To disclose information regarding such affiliates and their revenues required pursuant to Commission rule,⁴⁰⁰ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

Applicants providing information regarding an affiliate must provide the name of the affiliate and the affiliate's principal business. To simplify filling out FCC Form 175, an applicant can click on the **Select Business(es) Already Submitted** link when entering an affiliate that previously was entered as an FCC-regulated business for the applicant or a disclosable interest holder. Applicants will fill out two screens similar to those described above with respect to the affiliate, i.e., one screen requesting the relevant information and a second screen regarding the source of the revenue information.

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided revenue information with respect to each party for which revenue information is required: (1) the applicant; (2) each of the applicant's officers and directors; (3) each of the applicant's other controlling interests; (4) each of the applicant's affiliates; and (5) each affiliate of the applicant's controlling interests, including its officers and directors.⁴⁰¹

5. Foreign Ownership

Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.⁴⁰² The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.⁴⁰³

³⁹⁸ 47 C.F.R. § 1.2110(b)(3)(iii).

³⁹⁹ See *Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1942.

⁴⁰⁰ 47 C.F.R. § 1.2112(b)(1)(iii).

⁴⁰¹ *Id.*

⁴⁰² See 47 U.S.C. §§ 310 (a), (b).

⁴⁰³ See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Second Report and Order*, FCC 13-50, 28 FCC Rcd 5741, 5747-48 ¶ 7 (2013) ("*Foreign Ownership Second Report and Order*").

Section 310(a) prohibits a foreign government or its representative from holding any radio license.⁴⁰⁴ Section 310(b) contains specific restrictions on who can hold a broadcast, common carrier, or aeronautical radio station license. Sections 310(b)(1) and (b)(2) prohibit any alien or representative, and any foreign-organized corporation, respectively, from holding a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license.⁴⁰⁵ Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than twenty percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee.⁴⁰⁶ Section 310(b)(4) establishes a twenty-five percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee.⁴⁰⁷

In its 2012 *Foreign Ownership First Report and Order*, the Commission determined that it would forbear from applying the foreign ownership limitations in section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for the public interest review of foreign ownership subject to section 310(b)(4).⁴⁰⁸ In its 2013 *Foreign Ownership Second Report and Order*, the Commission adopted a rule codifying its existing requirement that common carrier licensees subject to section 310(b)(3) forbearance seek and obtain Commission prior approval before foreign ownership in the subject licensee exceeds twenty percent of its equity interests and/or twenty percent of its voting interests.⁴⁰⁹ The Commission similarly adopted a rule codifying its existing requirement that common carrier and aeronautical radio station licensees seek and obtain prior Commission approval of their U.S. parents' foreign ownership under section 310(b)(4) before direct or

⁴⁰⁴ 47 U.S.C. § 310(a). This prohibition is absolute, and the Commission has no discretion to waive it. *See Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741, 5748-49 ¶ 8. Section 310(a) does not, however, prohibit indirect foreign government control of licensees. *See id.*

⁴⁰⁵ *See* 47 U.S.C. §§ 310(b)(1), (2); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. The prohibitions in sections 310(b)(1) and (b)(2) are absolute, and the Commission has no discretion to waive them. As with section 310(a), these provisions do not bar an alien or representative, or a foreign-organized entity, from holding a controlling ownership interest in a U.S.-organized company that controls the licensee pursuant to the discretionary authority afforded by section 310(b)(4). *See Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. For ease of reference, we refer to aeronautical en route and aeronautical fixed radio station licenses as "aeronautical" licenses.

⁴⁰⁶ *See* 47 U.S.C. § 310(b)(3); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9.

⁴⁰⁷ *See* 47 U.S.C. § 310(b)(4); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. A foreign individual, government, or entity may own, directly or indirectly, more than twenty-five percent (and up to one hundred percent) of the stock of a U.S.-organized entity that holds a controlling interest in a common carrier or aeronautical radio licensee, unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership. *See Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741, 5749 ¶ 10. Foreign interests in a U.S.-organized parent that controls the licensee are subject to section 310(b)(4), not section 310(b)(3), and the Commission will continue to assess foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3). *See Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9 n.31.

⁴⁰⁸ *See* Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *First Report and Order*, FCC 12-93, 27 FCC Rcd 9832 (2012) ("*Foreign Ownership First Report and Order*").

⁴⁰⁹ *See Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5758-5763 ¶¶ 28-37; 47 C.F.R. § 1.990(a)(2). In reviewing a licensee's request to approve a higher level of foreign ownership under the Commission's section 310(b)(3) forbearance approach, the Commission will apply the same foreign ownership policies and procedures that it applies under section 310(b)(4). *Id.*

indirect foreign ownership of their U.S. parent companies exceeds the twenty-five percent statutory benchmark.⁴¹⁰

In keeping with this pre-approval process, an auction applicant is required to certify in its short-form application (FCC Form 175) that, as of the deadline for filing a short-form application for the auction, the applicant is in compliance with the foreign ownership provisions of section 310 or that it has filed a petition for declaratory ruling requesting Commission approval to exceed the statutory foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.⁴¹¹ An applicant should attach to its short-form application as an exhibit a copy of its date-stamped request for declaratory ruling concerning its foreign ownership. If an applicant has received a declaratory ruling from the Commission granting it permission to exceed the applicable foreign ownership limit or benchmark in Section 310(b), it should attach to its short-form application an exhibit that identifies the citation(s) of the applicable declaratory ruling(s) by “DA” or “FCC” number, or by the FCC Record citation, if available, as well as the release date of the declaratory ruling, and any other identifying information. It is not necessary for an applicant to file a request for declaratory ruling concerning its foreign ownership if the applicant attaches to its short-form application an exhibit showing that the requested license is exempt from the provisions of Section 310(b)(3) or (b)(4).

An applicant’s petition for a declaratory ruling to exceed the statutory limit or benchmark in section 310(b)(3) or (b)(4), respectively, must be granted before any license for which the applicant is a winning bidder may be granted. Potential applicants are encouraged to contact the Commission’s staff before filing their short-form applications if they have any questions about complying with these requirements.

Petitions for a declaratory ruling to exceed the foreign ownership restrictions in section 310(b)(3) or (b)(4) may be filed electronically on the Internet through the International Bureau Filing System (“IBFS”).⁴¹² There is no fee associated with such a filing. For information on filing your petition through IBFS, see Part 1, Subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>. For information about what must be included in section 310(b)(3) or (b)(4) petitions for declaratory ruling and how the Commission analyzes foreign ownership issues, see sections 1.990-1.994 of the Commission’s rules, 47 C.F.R. §§ 1.990-1.994, and the Commission’s recent foreign ownership decisions discussed herein. Inquiries regarding compliance with Section 310 of the Communications Act and the filing and processing of petitions for declaratory ruling should be directed to David Krech, Associate Division Chief, Policy Division, International Bureau, at (202) 418-7443 or by e-mail to david.krech@fcc.gov, or to Susan O’Connell, Attorney-Advisor, Policy Division, International Bureau, at (202) 418-1484 or by email to susan.oconnell@fcc.gov.

6. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant’s FCC Form 175 to help locate specific information. These screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 175.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one.

⁴¹⁰ See *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5758-5763 ¶¶ 28-37; 47 C.F.R. § 1.990(a)(1).

⁴¹¹ See 47 C.F.R. § 1.2105(a)(2)(v), (vi).

⁴¹² 47 C.F.R. § 1.990(b).

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing the information entered for each data entry field. To change any data item, the applicant should click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for License Selection takes the applicant to the *View/Edit License Selection* screen discussed above in the License Selection section.
- Clicking **VIEW/EDIT** for Agreements takes the applicant to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes the applicant to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters certain inconsistencies or omissions in information within the FCC Form 175 that must be corrected before submitting the application, the inconsistency or omission will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters certain apparent inconsistencies or omissions that might render the application incomplete or deficient if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent inconsistency or omission, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing the FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter certain inconsistencies or omissions, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

7. Acknowledgement Statement for Auction 97 Applicants

245. As discussed in Section II.G. of this Public Notice, an Auction 97 applicant must submit as an attachment to its FCC Form 175 short-form application the signed acknowledgement statement contained in Attachment G. The procedure for attaching this signed acknowledgement statement to FCC Form 175 is described in Section I.C.8 below.

8. Attaching Additional Information

If an applicant is required or otherwise needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information can be provided in an attachment. For example, applicants can describe the relationship among indirect owners of the applicant, or provide information regarding lease and resale arrangements (including wholesale) involving the spectrum capacity of applicants claiming eligibility for bidding credits.⁴¹³ As discussed in Section II.G. of this Public Notice and Section I.C.7 above, applicants to participate in Auction 97 must attach the signed acknowledgement statement contained in Attachment G to their FCC Form 175 short-form applications.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. This screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. In the case of the required acknowledgement statement for Auction 97 applicants, applicants should click on the **Attachments** link in the upper right of any screen and select “Acknowledgement” as the “Type” of attachment.

NOTE: If the attachment is a request for a waiver or exemption of any of the Commission’s rules or procedures, the applicant must identify the “Type” of attachment as a “Waiver” to facilitate prompt processing.

Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button. A list of any attachments already uploaded along with the applicant’s FCC Form 175 will appear at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats, including Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text. Applicants must, however, verify that the files contain all attachment information, and files may be no larger than 10 Mb and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended.

After the short-form application filing deadline, an application attachment may not be deleted or withdrawn.

9. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In these screens, applicants provide certifications required of all participants in the Commission’s competitive bidding processes,⁴¹⁴ and any Auction 97-specific certifications.⁴¹⁵

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate of the applicant, any controlling interest of the applicant, or any affiliate of a controlling interest has ever been in default on any Commission construction permit or license or has ever been delinquent on any non-tax debt owed to any Federal agency.⁴¹⁶ Current defaulters or delinquents are not eligible to

⁴¹³ Applicants claiming eligibility for bidding credits must disclose (1) a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant’s spectrum, and (2) a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship. 47 C.F.R. §§ 1.2112(b)(1)(iii)-(iv). These lists should be provided in an attachment to the application, with the attachment type identified as “Other.”

⁴¹⁴ See generally, 47 C.F.R. §§ 1.2105(a)(2)(iv)-(xi).

⁴¹⁵ See 47 C.F.R. §§ 1.2105(a)(2)(xii).

⁴¹⁶ 47 C.F.R. § 1.2105(a)(2)(xi).

participate in this auction. Former defaulters or delinquents who have remedied all such defaults and cured all of the outstanding non-tax delinquencies can participate in this auction so long as they are otherwise qualified and make upfront payments that are equal to 50 percent more than otherwise required.⁴¹⁷

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application.

Who Can Certify. A short-form application must be certified by a person with the authority to bind the applicant. For example, a short-form application can be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners, if the applicant is a partnership; (3) an officer, director, or duly-authorized employee, if the applicant is a corporation; (4) an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a Commission license.⁴¹⁸ Applicants are reminded that submission of an FCC Form 175 constitutes a representation by the person certifying that he or she is an authorized representative of the applicant with the authority to bind the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution. As noted above, a change in the person certifying the application is considered a major change to the short-form application and will not be permitted after the application deadline.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. Applicants should print a copy of the confirmation page for their records. They may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

FCC Form 175 applications for Auction 97 must be submitted and confirmed prior to 6:00 p.m. ET on Friday, September 12, 2014. Late applications or unconfirmed submissions of electronic data will not be accepted.

D. Withdrawing a Short-Form Application Before the Filing Deadline and Updating Existing Short-Form Applications

1. Withdrawing an Application

To withdraw a submitted application before the short-form application filing deadline, applicants should click on the **Withdraw Application** icon on the Auction Application Manager *Review or Modify Existing Short-Form Applications* page. All previously-submitted data will be deleted.

After the short-form application filing deadline, applications may not be withdrawn.

⁴¹⁷ 47 C.F.R. §§ 1.2105(a)(2)(xi), 1.2106(a).

⁴¹⁸ 47 C.F.R. § 1.2105(a)(2)(v).

Applicants may choose to not submit an upfront payment, and therefore, will not be qualified to bid in the auction. However, an applicant remains subject to the prohibition on certain communications under section 1.2105(c), until the down payment deadline following the close of the auction.

2. Updating Existing Applications

The *Review or Modify Existing Short-Form Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last updated, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

To review or continue working on an existing short-form application, an applicant should click the application auction number, which will produce the application's *Summary* page in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175 applications. After the revised application has been submitted, a confirmation page will display the application's file number and submission time and date. A copy of the confirmation page should be printed for your records. Applicants may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

After the filing deadline, an applicant may make only minor changes to its application. Major modifications will not be permitted (e.g., change its license selection(s) or person certifying the application, change in ownership of the applicant that would constitute an assignment or transfer of control, or claim eligibility for a higher percentage of bidding credit).⁴¹⁹

II. Upfront Payment Submission

A. Upfront Payment Calculator and Form 159

Applicants may access the **Upfront Payment Calculator and Form 159** from the *Review or Modify Existing Short-Form Applications* page and from the *Auction Application Submit Confirmation* page. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, the applicant may click the **Form 159** button to obtain the FCC Form 159. For further instructions on how to submit the FCC Form 159, see Attachment E to this Public Notice.

B. Refund of Upfront Payment

On the *Auction Application Submit Confirmation* page, applicants can click on the **Wire Transfer for Refund Purposes** link to provide wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit.

III. Miscellaneous

A. Access to View Short-Form Applications

After the deadline for filing short-form applications, the Commission will process all timely-submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete, (2) those that are rejected, and (3) those that are incomplete or deficient because of minor defects that may be corrected. Once that public notice is released, any interested parties may be able to view the short-form applications by searching for them in the Commission's database.

⁴¹⁹ 47 C.F.R. § 1.2105(b).

To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov> (secondary location) and click the **Auction Application Search** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page.

B. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

Paperwork Reduction Act Approval: The FCC Form 175 was assigned control number 3060-0600 and was approved, as revised, by the Office of Management and Budget on January 23, 2014.

ATTACHMENT E

**Auction-Specific Instructions for
FCC Remittance Advice (FCC Form 159-February 2003 Edition)**

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 97. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**

Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below:

| Block Number | Required Information |
|-------------------------|---|
| 1 | LOCKBOX # - Enter "979085" |
| 2 | Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175. |
| 3 | Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03). |
| 4-8 | Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section. |
| 9 | Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment. |
| 10 | Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service). |
| 11 | Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES"). |
| 21 | Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES. |
| 24A | Payment Type Code - Enter "U097" |
| 25A | Quantity - Enter the number "1" |
| 26A | Fee Due - Amount of Upfront Payment |
| 27A | Total Fee - Will be the same amount as 26A. |
| 28A | FCC Code 1 - Enter the number "97" (indicating Auction 97). |

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

ATTACHMENT F

**Summary Listing of Judicial, Commission and Bureau Documents Addressing
Application of the Rule Prohibiting Certain Communications,
47 C.F.R. § 1.2105(c)**

A. Judicial Decisions

Star Wireless, LLC v. FCC, 522 F.3d 469 (D.C. Cir. 2008).

High Plains Wireless, L.P. v. FCC, 276 F.3d 599 (D.C. Cir. 2002).

B. Commission Decisions

Procedural Amendments to Commission Part 1 Competitive Bidding Rules, *Order*, FCC 10-4, 25 FCC Rcd 521 (2010).

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15395 ¶¶ 285-86, 15489 (2007).

Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001).

Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999); Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, FCC 98-42, 13 FCC Rcd 8305 (1998).

Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, 14 FCC Rcd 8816 (1999); Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 98-41, 13 FCC Rcd 8286 (1998).

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970 (1997).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

C. Wireless Telecommunications Bureau Decisions

Lotus Communications Corp., *Order*, DA 08-1364, 23 FCC Rcd 9107 (Wireless Telecom. Bur. 2008).

Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, *Order*, DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

1. Public Notices

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (Wireless Telecom. Bur. 2004).

Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122, 16 FCC Rcd 16391 (Wireless Telecom. Bur. 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17877 (Auc. Div. 1998).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

D. Enforcement Bureau Decisions

Cascade Access, L.L.C., *Notice of Apparent Liability for Forfeiture*, DA 09-207, 24 FCC Rcd 1350 (Enf. Bur. 2009).

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

E. Civil Actions Initiated by U.S. Department of Justice

USA v. Northeast Communications of Wisconsin, Inc., No. 07-C-715, 608 F.Supp.2d 1049 (E.D.Wis. June 25, 2008).

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 Fed. Reg. 65,228 (Nov. 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release*, U.S. Department of Justice (Nov. 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. Nov. 10, 1998).

How to Obtain Copies of Decisions Relating to Section 1.2105(c)

Many of the documents listed in this attachment can be retrieved from the following Commission web site: http://wireless.fcc.gov/auctions/prohibited_communications.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160, or at <http://www.bcpweb.com>.

ATTACHMENT G

Acknowledgement Statement for Auction 97 Applicants

Applicant acknowledges that under 47 C.F.R. § 27.1134(f) it must accept any interference from incumbent federal operations in 1755-1780 MHz identified in an approved Transition Plan until such time as these operations vacate the 1755-1780 MHz band in accordance with 47 CFR part 301, and that under 47 USC § 2.106, US note 91 it must accept harmful interference from certain incumbent federal systems, including federal earth stations at 25 sites. Applicant accepts the risk that this may pose to any base station or associated equipment that it may deploy; any services it may offer; and any of its other business arrangements. Applicant acknowledges that it understands these risks could potentially affect the value of any licenses in 1755-1780 MHz band and that it has considered these risks before submitting any bids for applicable licenses in Auction 97. This acknowledgement does not supersede the licensee's rights and obligations specified by law, rule, or other Commission action with respect to these frequencies.

By: _____

Printed Name: _____

Title: _____

Applicant Name: _____